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PART II

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FEDERAL HOUSING ADMINISTRATION

Revision of Regulations

Title 24—HOUSING AND HOUSING CREDIT

Chapter II—Federal Housing Administration, Housing and Home Finance Agency

REVISION OF REGULATIONS

Chapter II of Title 24 of the Code of Federal Regulations is reorganized and revised to read as set forth below. In this revision the parts have been renumbered and redesignated to correspond to the sections of the National Housing Act, as amended, except for the text of Subchapters A and B.

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NEAL J. HARDY,
Federal Housing Commissioner.

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AUTHORITY: §§ 200.1 to 200.208 issued under sec. 2, 48 Stat. 1246, as amended, sec. 211, 52 Stat. 23, as amended, sec. 607, 55 Stat. 61, as amended, sec. 712, 62 Stat. 1281, as amended, sec. 907, 65 Stat. 301, as amended, sec. 807, 69 Stat. 651 as amended; 12 U.S.C. 1703, 1715b, 1742, 1747k, 1748f, 1750f.

Subpart A—Origin and Establishment

§ 200.1 Creation.

The Federal Housing Administration (frequently referred to herein as the FHA) was created by the National Housing Act approved June 27, 1934 (48 Stat. 1246; 12 U.S.C. 1702) and amended by subsequent Acts of Congress.

§ 200.2 Status.

The Federal Housing Administration is a constituent agency of the Housing and Home Finance Agency pursuant to the provisions of Reorganization Plan No. 3 of 1947, effective July 27, 1947 (61 Stat. 954; 5 U.S.C. 133y–16 note).

§ 200.3 Purpose.

The Federal Housing Administration was established to encourage improvement in housing standards and conditions, to provide an adequate home financing system by insurance of housing mortgages and credit, and to exert a stabilizing influence on the mortgage market.

Subpart B—Functions and Programs

In General

§ 200.5 Scope of programs.

The Federal Housing Administration does not make loans or build housing but operates insurance programs under provisions of the National Housing Act. The FHA provides insurance against loss on home and housing project mortgages and property improvement loans made by private lending institutions and also insures yields on investments in rental housing for families of moderate income where no mortgage financing is involved. The various insurance programs are outlined in §§ 200.10 to 200.34, and more particularly described in other parts of this chapter.

§ 200.6 Application for lender approval.

An application for approval, as a mortgagee, as a loan correspondent or as a Title I lending institution is submitted on an appropriate form prescribed by the Commissioner. These forms may be obtained from any local FHA insuring office or from the Headquarters Office in Washington, D.C. When fully executed the form is submitted to the insuring office having jurisdiction for transmittal to the Headquarters Office, Washington, D.C.

Home Mortgage Insurance

§ 200.10 One- to four-family homes.

(a) The FHA insures mortgages on one- to four-family homes. The mortgage transaction must be acceptable to the Commissioner and the maximum mortgage cannot exceed an amount computed under a statutory formula based on the ratio the loan bears to the appraised value of the property.

(b) The basic home mortgage insurance program is authorized under Title II, section 203(b) of the National Housing Act and governed by regulations contained in Part 203 of this chapter.

§ 200.11 Disaster damage to homes.

(a) The FHA insures mortgages given to finance the replacement of homes destroyed or extensively damaged by major disasters. The mortgage transaction must be acceptable to the Commissioner and the maximum mortgage cannot exceed an amount computed under a statutory formula based on the ratio the loan bears to the appraised value of the property.

(b) This program is authorized under Title II, section 203(h) of the National Housing Act and governed by regulations contained in Part 203 of this chapter.

§ 200.12 Suburban and farm homes.

(a) The FHA insures mortgages on single-family owner-occupied homes located in outlying areas and small communities, and on farm homes located on plots of land 5 acres or more in size adjacent to public highways. The mortgage transaction must be acceptable to the Commissioner and the maximum mortgage cannot exceed an amount computed under a statutory formula based on the ratio the loan bears to the appraised value of the property.

(b) This program is authorized under Title II, section 203(i) of the National Housing Act and governed by regulations contained in Part 203 of this chapter.

§ 200.13 Homes for servicemen.

(a) The FHA insures mortgages on dwellings owned and occupied by servicemen on active duty with the Armed Forces or the Coast Guard. The mortgage transaction must be acceptable to the Commissioner and the maximum mortgage cannot exceed an amount computed under a statutory formula based on the ratio the loan bears to the appraised value of the property. Certification by the Secretary of Defense (or the Secretary of the Treasury, for Coast Guard personnel) is required to the effect that the serviceman requires housing and that he is and has been for more than 2 years on active duty.

(b) This program is authorized under Title II, section 222 of the National Housing Act and governed by regulations contained in Part 222 of this chapter.

§ 200.14 Homes for the elderly.

(a) The FHA assists persons 60 years of age or older who are seeking to purchase a home, by insuring mortgages on dwellings owned and occupied by such elderly persons. The mortgage transaction must be acceptable to the Commissioner and the maximum mortgage cannot exceed an amount computed under a statutory formula based on the ratio the loan bears to the replacement cost of the property. Where the mortgagor is 60 years of age or over, a corporation or person other than the mortgagor may make the required downpayment and become a cosigner standing good for continuing payments.

(b) This program is authorized under Title II, section 203(b) of the National Housing Act and governed by regulations contained in Part 203 of this chapter.

§ 200.15 Homes for Armed Services civilian employees.

(a) The FHA insures mortgages covering sales of one- to four-family homes owned or occupied by civilian employees of the Armed Forces, or a contractor thereof, employed at military research and development installations. The mortgage transaction must be acceptable to the Commissioner and the maximum mortgage cannot exceed an amount computed under a statutory formula based on the ratio the loan bears to the appraised value of the property. Certification by the Secretary of Defense is required regarding the status of the mortgagor as a civilian employee at the installation, the mortgagor's need for housing, the need for housing accommodations for civilian personnel at the installation and the permanency of the civilian personnel. The Secretary of Defense may be required to guarantee the insured mortgages if the Commissioner determines that the housing is not an acceptable risk.

(b) This program is authorized by Title VIII of the National Housing Act and governed by regulations contained in Parts 803 and 809 of this chapter.

§ 200.16 Other home mortgage assistance.

The FHA offers other types of home mortgage insurance assistance in connection with programs under other titles of the National Housing Act as indicated by §§ 200.30, 200.32, 200.33, and 200.34.

Project Mortgage Insurance

§ 200.20 Rental projects.

(a) The FHA insures mortgages, including advances made during construction, on rental projects of eight or more units. The mortgage may not exceed $12,500,000, except that it may be in an amount not to exceed $50,000,000 if the mortgagor is a public agency or a limited dividend, redevelopment or housing corporation, restricted by Federal or State laws or regulations of a State banking or insurance department. The mortgage transaction must be acceptable to the Commissioner and the maximum mortgage cannot exceed an amount computed under a statutory formula based on a ratio the loan bears to the appraised value of the property.

(b) The basic rental housing project mortgage insurance program is authorized under section 207 of the National Housing Act. The regulations governing this activity are contained in Part 207 of this chapter.

§ 200.21 Rental housing for the elderly.

(a) The FHA assists in financing the construction or rehabilitation of rental housing for the elderly by nonprofit organizations approved by the FHA as to financial responsibility. Such organizations, including fraternal orders, church groups, labor organizations and retired teachers' associations, may obtain FHA insurance on mortgages to finance rental housing projects specially designed for use and occupancy of persons sixty years of age or over. The mortgage transaction must be acceptable to the Commissioner and the maximum mortgage cannot exceed an amount computed under a statutory formula based on a ratio the loan bears to the replacement cost of the property.

(b) This program is authorized under

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vation of existing properties and neigh-

development project is being carried out.

(b) This program is authorized under Title II, sections 207 (b) and (c) of the National Housing Act and governed by regulations contained in Part 207 of this chapter.

§ 200.22 Housing for Armed Services military personnel.

(a) The FHA insures mortgages on rental housing for military personnel of the armed forces including the Coast Guard, built under contract between the Secretary of Defense (or the Secretary of the Treasury for Coast Guard housing) and the builder on land owned or leased by the Government at or near military installations. The mortgage transaction must be acceptable to the Commissioner and the maximum mortgage cannot exceed the lowest of the following: replacement cost; an average of $16,500 per unit; or the amount of the successful bid.

(b) This program is authorized by Title VIII of the National Housing Act and governed by regulations contained in Parts 803 and 809 of this chapter.

§ 200.23 Investment insurance.

(a) In order to encourage investment in debt-free rental housing for families of moderate income the FHA insures the minimum amortization charge of 2 percent of the established investment (including all approved costs prior to initial occupancy) and a fixed annual return on the outstanding investment in an eligible project.

(b) This program is authorized under Title VII of the National Housing Act and governed by Parts 290 and 291 of this chapter.

§ 200.24 Other project mortgage assistance.

The FHA offers other types of project mortgage insurance in connection with programs under other titles of the National Housing Act as indicated by §§ 200.30, 200.31, 200.32, 200.33, and 200.34.

Cooperative Housing Insurance

§ 200.30 Cooperative projects.

(a) The FHA insures mortgages, including construction advances, on cooperative housing projects. The mortgagor may be a nonprofit cooperative ownership housing corporation or trust, the permanent occupancy of the dwellings being restricted to members of the corporation or beneficiaries of the trust (management-type project), or a nonprofit corporation or trust organized for the purpose of building homes for members (sales-type project) or a corporate investor that certifies to the FHA its intention of selling the project to a cooperative group within two years after completion (investor-sponsor project).

(b) The mortgage transaction must be acceptable to the Commissioner and the maximum mortgage on project-type housing cannot exceed an amount computed under a statutory formula based on a ratio the loan bears to the replacement cost of the property. In the case of sales-type projects, provision is made for the release of the individual properties from the blanket project mortgage, and the insurance of the individual mortgage covering the individual dwelling with the principal amount limited to the unpaid balance of the blanket mortgage allocable to the individual property as of the date of the release.

(c) This program is authorized under Title II, section 213 of the National Housing Act and governed by regulations contained in Part 213 of this chapter.

Trailer Courts and Parks Insurance

§ 200.31 Sites and facilities for mobile homes.

(a) The FHA insures mortgages on trailer courts and parks. The mortgage transaction must be acceptable to the Commissioner and the maximum mortgage cannot exceed an amount computed under a statutory formula based on a ratio the loan bears to the estimated value of the property after the improvements are completed. The insurance applies to mortgages on sites and facilities but not on the trailers themselves. The court or park must have at least fifty spaces on one site designed for rental use for trailers or mobile homes and must meet minimum requirements designed to improve the living conditions of the occupants.

(b) This program is authorized under Title II, section 207 of the National Housing Act and governed by regulations contained in Part 207 of this chapter.

Urban Renewal Insurance

§ 200.32 Residential rehabilitation.

(a) To assist in the elimination of slums and urban blight and the conservation of existing properties and neighborhoods or for disaster areas the FHA insures mortgages for financing the rehabilitation of existing salvable housing and the replacement of slums with new housing in areas for which, in other than disaster areas, urban renewal plans or urban redevelopment plans have been certified to FHA by the Housing and Home Finance Administrator. As a step preliminary to such certification the Administrator must have approved and certified a workable program designed for the entire community to eliminate slums and prevent the spread of urban blight, unless the plans were approved before the enactment of the Housing Act of 1954.

(b) The mortgage transaction must be acceptable to the Commissioner and the maximum mortgage cannot exceed an amount computed under a statutory formula based on a ratio the loan bears to the replacement cost where the properties are approved for insurance prior to the beginning of construction or a ratio the loan bears to appraised value where the properties are not approved for insurance prior to the beginning of construction.

(c) This program is authorized under Title II, section 220 of the National Housing Act and governed by regulations contained in Part 220 of this chapter.

§ 200.33 Residential relocation.

(a) The FHA insures mortgages on low-cost housing for families from urban renewal areas or families displaced by reason of governmental action in a community that has a workable program for the elimination and prevention of slums and urban blight, or where a federally aided slum clearance and urban redevelopment project is being carried out. Also insurable are mortgages covering repair or rehabilitation or the construction of dwellings for rent if the mortgagor is a private nonprofit organization regulated under Federal or State laws.

(b) The mortgage transaction must be acceptable to the Commissioner and the maximum mortgage cannot exceed an amount computed under a statutory formula based on the ratio the loan bears to the replacement cost or value of the property.

(c) This program is authorized under Title II, section 221 of the National Housing Act and governed by regulations contained in Part 221 of this chapter.

Publicly Constructed Housing Insurance

§ 200.34 Miscellaneous type mortgages.

The FHA insures mortgages financing purchases of certain types of permanent housing sold by Federal and State Governments, including the first resale. This program is authorized under Title II, section 223 of the National Housing Act and governed by regulations set out in connection with each of the applicable insurance programs.

Property Improvement Loan Insurance

§ 200.35 Title I.

The FHA insures financial institutions against loss on loans made to finance alterations, repairs and improvements to existing structures and the building of small new structures for nonresidential use. This program is authorized under Title I, section 2 of the National Housing Act and governed by regulations contained in Part 201 of this chapter.

Subpart C—Organization and Management

§ 200.40 Commissioner.

The Federal Housing Administration is headed by a Commissioner appointed by the President by and with the advice and consent of the Senate.

§ 200.41 Administrative staff.

The principal administrative staff of the FHA includes the Deputy Commissioner, the General Counsel, and Assistant Commissioners, whose respective duties and areas of authority are indicated by their titles.

§ 200.42 Principal divisions.

Various Divisions have been established in the Headquarters office at Washington, D.C. which are altered as programs, authority and duties are changed from time to time.

§ 200.43 Zone Operations Commissioners.

The territory served by the Federal Housing Administration is divided into geographical zones or regions comprised of a group of field insuring offices. Each zone is headed by a Zone Operations Commissioner who is responsible to an Assistant Commissioner for the supervision, direction and coordination of all functions and responsibilities of the several offices within the regional jurisdiction established for the particular zone.

§ 200.44 Field Office Directors.

Each of the insuring offices is managed and supervised by a Director who is the operating head thereof and the representative of the FHA in the territory served by the insuring office. The Director is also responsible for the administration of those of the various service offices or valuation stations established in his territory.

Subpart D—Delegations of Basic Authority and Functions

DELEGATIONS TO PARTICULAR POSITIONS

§ 200.50 Statutory authority for delegations.

(a) Section 1 of Title I of the National Housing Act provides in part as follows:

* * * In order to carry out the provisions of this title and Titles II, III, VI, VII, VIII and IX, the Commissioner may establish such agencies, accept and utilize such voluntary and uncompensated services, utilize such federal officers and employees, and, with the consent of the State, such State and local officers and employees, and appoint such other officers and employees as he may find necessary, and may prescribe their authorities, duties, responsibilities, * * *. The Commissioner may delegate any of the functions and powers conferred upon him under this title and Titles II, III, VI, VII, VIII and IX to such officers, agents and employees as he may designate or appoint * * *.

(b) Section 3 of Reorganization Plan No. 3 of 1947, effective July 27, 1947, provides in part as follows:

Federal Housing Administration. The Federal Housing Administration shall be headed by a Federal Housing Commissioner * * *. There are transferred to said Commissioner the functions of the Federal Housing Administrator.

§ 200.51 Acting Commissioner.

The Deputy Commissioner, the Assistant to the Commissioner, the General Counsel, the Assistant Commissioner for Field Operations, the Assistant Commissioner for Multifamily Housing Operations, the Assistant Commissioner-Comptroller, and the Assistant Commissioner for Administration, in the order named, are designated by the Commissioner to act in his place and stead in the event of his absence or inability to act, having the title of "Acting Commissioner" with all the powers, duties, and rights conferred on the Commissioner by the National Housing Act, as amended by Reorganization Plan No. 3 of 1947, by any other act of Congress or by any Executive order.

§ 200.52 Deputy Commissioner.

To the position of Deputy Commissioner there is delegated the basic authority and functions and to act with and for the Commissioner in the general administration of the Federal Housing Administration, in the determination of basic policy and in the general supervision, direction and coordination of all operations, activities and functions of the Federal Housing Administration, with full authority at all times to make any decision which the Commissioner is authorized to make and to issue any order which the Commissioner is authorized to issue.

§ 200.53 General Counsel and Associate General Counsel.

To the position of General Counsel and under his general supervision to the position of Associate General Counsel there is delegated the following basic authority and functions:

(a) To interpret the provisions of the National Housing Act and to prepare and interpret the rules and regulations thereunder.

(b) To direct all litigation affecting the Federal Housing Administration and to sign, acknowledge and verify on behalf of and in the name of the Commissioner, all declarations, bills, pleas, answers and all other pleadings in any court proceedings which are brought in the name of or against the Federal Housing Commissioner, or in which he is named as a party.

(c) To act for the FHA in the drafting of legislation and in the provision of legal advice with respect to legislation pertaining to the FHA and its program.

(d) On behalf of the Commissioner to receive and accept service of all summons, subpoenas and other court processes directed to the Commissioner.

(e) To administer all matters pertaining to the determination of acceptability of title and the preparation of legal forms necessary to the work of the Administration.

(f) To direct the submission of cases to the Attorney General for appropriate legal action.

(g) To act with the Commissioner in the determination of basic policy and to be a member of the Executive Board.

§ 200.54 Assistant Commissioner for Field Operations and Deputy.

To the position of Assistant Commissioner for Field Operations and under his general supervision to the position of Deputy Assistant Commissioner for Field Operations there is delegated the following basic authority and functions:

§ 200.55 Zone Operations Commissioners.

To the position of Zone Operations Commissioner there is delegated the following basic authority and functions:

§ 200.59 Director of the Urban Renewal

Operations there is delegated the following basic authority and functions:

(a) To act with the Commissioner in the determination of basic policy and be a member of the Executive Board.

(b) To develop and recommend policies and establish operating plans and procedures for the insurance of home mortgages and property improvement loans.

(c) To direct all field operations other than the insurance and servicing of multifamily housing mortgages.

(d) To coordinate and have general supervision over the Zone Operations Commissioners responsible for program execution and activities in the field, and the Mortgagee Approval Section.

(e) To approve or cancel the approval of financial institutions as approved mortgagees.

(f) To approve or disapprove the erroneous or inadvertent noncollection or refund of fees.

(g) To issue or cancel contracts of insurance under Title I of the National Housing Act and transfer such contracts and the rights and benefits accruing thereunder between lending institutions, and to supervise activities in connection with the Certified Agency Program and to designate, qualify and certify approved mortgagees as agents of the Federal Housing Administration to process mortgage insurance applications and issue commitments for insurance.

(h) To exercise the authority of the Commissioner under the regulations governing the insurance of loans under section 2 of Title I of the National Housing Act in any instance which is subject to the approval of the Commissioner.

(i) To reject or accept for insurance loans or advances of credit made under the provisions of section 2 of Title I of the National Housing Act that require the prior approval of the Federal Housing Commissioner.

(j) To institute precautionary measures with respect to any dealer or contractor operating under the provisions of section 2 of Title I of the National Housing Act.

(k) To direct and supervise surveys of Title I lending institutions to assure compliance with established policies and terms of insurance contracts.

§ 200.55 Zone Operations Commissioners and Deputies.

To the position of Zone Operations Commissioner and to each of them, and under their general supervision to the position of Deputy Zone Operations Commissioner and to each of them there is delegated the following basic authority and functions:

(a) To direct the execution of policies, programs and activities of the Federal Housing Administration, other than the insurance and servicing of multifamily housing mortgages, in the geographical region under his jurisdiction.

(b) To determine and report the effect of FHA policies, rules and regulations and the attainment of program objectives in the operations under his jurisdiction, and to make basic policy and program recommendations with respect thereto.

(c) To establish regional policies for operations under his jurisdiction consistent with and in furtherance of basic policies and programs established by the Commissioner.

(d) To recommend issuance or cancellation of contracts of insurance under Title I of the National Housing Act and the transfer of such contracts and the rights and benefits accruing thereunder between lending institutions.

(e) To recommend approval, disapproval or cancellation of the approval of financial institutions as approved mortgagees.

(f) To supervise activities in connection with the Certified Agency Program and to designate, qualify and certify appraisers and inspectors under such program. This authority may be subdelegated to Field Office Directors.

§ 200.56 Field Office Directors and Assistants.

To the position of Field Office Director, and to each of them, and to the position of Assistant Field Office Director, and to each of them under the general supervision of the Field Office Director having jurisdiction there is delegated the following basic authority and functions to direct and supervise all activities of the Federal Housing Administration in the geographical area under his jurisdiction.

§ 200.57 Assistant Commissioner for Multifamily Housing Operations.

To the position of Assistant Commissioner for Multifamily Housing Operations there is delegated the following basic authority and functions:

(a) To act with the Commissioner and under his direction in the determination of basic policy and be a member of the Executive Board.

(b) To be responsible to the Commissioner for coordination and general supervision of the Rental Housing Division, the Urban Renewal Division, the Cooperative Housing Division, and the Zone Multifamily Housing Offices, and for the direction of the insurance and servicing of multifamily housing mortgages.

(c) To approve the sale and terms of sale of mortgages taken as security in connection with the sale of property conveyed to the Federal Housing Commissioner and to approve the modification in the terms of and authorize the foreclosure of insured mortgages and mortgages assigned to the Commissioner in exchange for debentures.

(d) To exercise the authority of the Commissioner as holder of the preferred stock in any corporation or under any regulatory agreement or other agreement made for the purpose of controlling or regulating a housing project on which there is a mortgage held or insured by the Commissioner.

§ 200.58 Director of the Rental Housing Division and Deputy.

To the position of Director of the Rental Housing Division and under his general supervision to the position of Deputy Director of the Rental Housing Division there is delegated the following basic authority and functions:

(a) To direct the activities of the Rental Housing Division.

(b) To direct the operation of all rental housing mortgage insurance programs, other than urban renewal, interpreting and supervising the application of policies, standards and procedures in the insurance and servicing of rental project mortgages.

(c) To approve the sale and terms of sale of mortgages taken as security in connection with the sale of property conveyed to the Federal Housing Commissioner and to approve the modification in the terms of and authorize the foreclosure of insured mortgages and mortgages assigned to the Commissioner in exchange for debentures.

§ 200.59 Director of the Urban Renewal Division and Deputy.

To the position of Director of the Urban Renewal Division and under his general supervision to the position of Deputy Director of the Urban Renewal Division there is delegated the following basic authority and functions:

(a) To direct the activities of the Urban Renewal Division.

(b) To direct rental project mortgage insurance operations under the urban renewal program and coordinate FHA participation in urban renewal, interpreting and supervising the application of policies, standards and procedures in the insurance and servicing of rental project mortgages under the urban renewal program.

(c) To approve the sale and terms of sale of mortgages taken as security in connection with the sale of property conveyed to the Federal Housing Commissioner and to approve the modification in the terms of and authorize the foreclosure of insured mortgages and mortgages assigned to the Commissioner in exchange for debentures.

§ 200.60 Director of the Cooperative Housing Division and Deputy.

To the position of Director of the Cooperative Housing Division and under his general supervision to the position of Deputy Director of the Cooperative Housing Division there is delegated the following basic authority and functions:

(a) To direct the activities of the Cooperative Housing Division.

(b) To direct the operation of the cooperative housing program, interpreting and supervising the application of policies, standards and procedures in the insurance of cooperative housing mortgages and the servicing of insured cooperative housing mortgages.

(c) To provide technical advice and guidance to consumer groups concerning the organization, financing and management of cooperative housing projects.

(d) To approve the sale and terms of sale of mortgages taken as security in connection with the sale of property conveyed to the Federal Housing Commissioner and to approve the modification in the terms of and authorize the foreclosure of insured mortgages and mortgages assigned to the Commissioner in exchange for debentures.

§ 200.61 Directors of the Zone Multifamily Housing Offices.

To the position of Director of the Zone Multifamily Housing Office and to each of them there is delegated the following duties and functions:

(a) To direct multifamily housing mortgage insurance operations and project mortgage servicing operations within the geographical zone under his jurisdiction.

§ 200.62 Assistant Commissioner for Technical Standards and Deputy.

To the position of Assistant Commissioner for Technical Standards and under his general supervision to the position of Deputy Assistant Commissioner for Technical Standards there is delegated the following basic authority and functions:

(a) To act with the Commissioner and under his direction in the determination of basic policy and be a member of the Executive Board.

(b) To be responsible to the Commissioner for coordination and general supervision of the Architectural Standards Division and the Appraisal and Mortgage Risk Division comprising the functions of establishing and maintaining standards, methods, procedures and techniques in the areas of architecture and engineering, construction cost, land planning, mortgage credit, valuation, the selection and rating of mortgage risk and the provision of technical advice and guidance in these fields to all organizational elements of the Administration.

§ 200.63 Director of the Architectural Standards Division and Deputy.

To the position of Director of the Architectural Standards Division and under his general supervision to the position of Deputy Director of the Architectural Standards Division there is delegated the following basic authority and functions:

(a) To develop and maintain architectural and engineering standards, techniques and procedures.

(b) To develop and maintain methods, standards, techniques and procedures for construction cost estimation.

(c) To provide technical advice and guidance to all organizational elements of the Administration in the fields of architecture, engineering and construction cost.

§ 200.64 Director of the Appraisal and Mortgage Risk Division and Deputy.

To the position of Director of the Appraisal and Mortgage Risk Division and under his general supervision to the position of Deputy Director of the Appraisal and Mortgage Risk Division there is delegated the following basic authority and functions:

(a) To develop and maintain standards, procedures and techniques for the valuation of property, determination of acceptability of mortgage credit, land planning and for the over-all determination of mortgage risk and the acceptability of mortgage risks for insurance.

(b) To provide technical advice and guidance to all organizational elements of the Administration in the fields of valuation, mortgage credit, land planning and risk determination.

§ 200.65 Assistant Commissioner for Programs and Deputy.

To the position of Assistant Commissioner for Programs and under his general supervision to the position of Deputy Assistant Commissioner for Programs there is delegated the following basic authority and functions:

(a) To act with the Commissioner and under his direction in the determination of basic policy and be a member of the Executive Board.

(b) To be responsible to the Commissioner for the coordination and general supervision of the Program Division and the Research and Statistics Division comprising the functions of coordination of the development and formulation for the approval of the Commissioner of basic programs and related policies and program planning and the appraisal of programs and program objectives, and the maintenance of a program of housing market analyses, housing statistics, advice and counsel on economic problems, conduct of actuarial studies, and the provision of a complete actuarial service for all insurance programs.

§ 200.66 Director of the Research and Statistics Division and Deputy.

To the position of Director of the Research and Statistics Division and under his general supervision to the position of Deputy Director of the Research and Statistics Division there is delegated the following basic authority and functions:

(a) To provide advice and counsel on economic problems.

(b) To maintain a program of housing market analysis.

(c) To maintain a program of housing statistics and statistics on the operations of the Federal Housing Administration.

(d) To conduct actuarial studies and provide complete actuarial service for all insurance programs.

§ 200.67 Director of the Program Division.

To the position of Director of the Program Division there is delegated the following basic authority and functions:

(a) To develop and recommend basic program plans and related policies.

(b) To maintain a continuing appraisal of the effectiveness of programs and policies.

(c) To assist and advise with respect to the development and evaluation of legislative proposals affecting the programs of the Federal Housing Administration.

§ 200.68 Assistant Commissioner for Administration and Deputy.

To the position of Assistant Commissioner for Administration and under his general supervision to the position of Deputy Assistant Commissioner for Administration there is delegated the following basic authority and functions:

(a) To be responsible for a comprehensive program of administrative management and services, comprising all personnel policy, procedures and activities; organizational structures and related matters; all budget activities; contracting procurement, supply, printing, space management, library, and other office services; management surveys; forms and records management; coordination and maintenance of the FHA Manual, directives and other issuances and instructional material; and to be in charge of the Personnel Division, the Budget Division, the General Services Division, and the Management Division.

(b) To make or cause to be made under his direction appointments, promotions, demotions, transfers, reassignments, removals and separations of personnel; to fix or direct the fixing of the administrative workweek; to approve or direct the approval of overtime work and to prescribe or approve rules, procedures, and regulatory requirements regarding overtime; to act as representative of the Federal Housing Administration with the Civil Service Commission and to maintain liaison with other government agencies and other organizations with respect to personnel matters.

(c) To make or cause to be made under his direction budget estimates, requests for apportionment, and allotments of funds; and to represent the Federal Housing Administration on budget matters with the Bureau of the Budget and other government agencies and organizations.

(d) To execute or cause to be executed under his direction all contracts for goods and services, agreements and leases for office space, and certificates of need in connection with space requirements; to approve or cause to be approved under his direction travel and transportation of household goods and personal effects; to approve or supervise the disposition of personal property, other than that acquired under insurance contracts, the issuance of orders for publication of notices and advertisements in newspapers, magazines and periodicals, and arrangements for the provision of necessary services and relocation sites for field offices in connection with civil defense activities; and to represent the Federal Housing Administration with the General Services Administration and other government agencies on administrative service matters.

(e) To take any action authorized to be taken by any division or office within his jurisdiction.

(f) To act for the Commissioner in approving the settlement of tort claims for and against the Commissioner and the execution of releases or other instruments required in connection therewith.

(g) To act with the Commissioner and under his direction in the determination of basic policy and be a member of the Executive Board.

(h) To develop, review, evaluate and recommend to the Commissioner organizational structure, delegations of authority, and distribution of functions.

§ 200.69 Director of Personnel and Deputy.

To the position of Director of Personnel and under his general supervision to the position of Deputy Director of Personnel there is delegated the following basic authority and functions:

(a) To be responsible for the development, establishment and operation of a comprehensive personnel program, in-

cluding employment, selection and placement, standards, position classification, employee relations, training and incentive awards.

(b) To make appointments, promotions, demotions, transfers and reassignments of personnel, and to remove or separate personnel; to fix the administrative work week; to approve overtime work, and to prescribe rules and regulations regarding overtime.

(c) To represent the Federal Housing Administration with the Civil Service Commission and with other government agencies and organizations with respect to personnel matters.

§ 200.70 Director of the Budget Division and Deputy.

To the position of Director of the Budget Division and under his general supervision to the position of Deputy Director of the Budget Division there is delegated the following basic authority and functions:

(a) To direct all budget activities of the Federal Housing Administration and to represent the Federal Housing Administration in budget matters with the Bureau of the Budget and with other government agencies and organizations.

(b) To be responsible for the development and execution of the budget program, including the preparation of budget estimates and justification therefor; the preparation of requests for apportionment of funds and justification therefor; and the allotment of funds within the limits of appropriation acts, apportionments and other limitations.

§ 200.71 Director of the General Services Division and Deputy.

To the position of Director of the General Services Division and under his general supervision to the position of Deputy Director of the General Services Division there is delegated the following basic authority and functions:

(a) To be responsible for a program of general services, including contracting and procurement, rental and assignment of office space, telecommunications, printing and publication, administrative property control, mail and messenger, stenographic pool, travel service and library.

(b) To execute all contracts, incur obligations, and authorize expenditures for services and procurement, including brokers' agreements, contracts for performance on a fee basis of technical or professional consulting services and contracts for materials, equipment and services for the maintenance and operation of acquired properties.

(c) To execute all agreements for office space and collateral services throughout the United States, to obligate the Federal Housing Administration for the payment of rents and charges in connection therewith, and to negotiate and execute lease agreements for the field office space and services beyond the continental limits of the United States.

(d) To represent the Federal Housing Administration and maintain liaison with the General Services Administration and other Government agencies in all general services matters.

(e) To execute Certificates of Need in connection with space requirements in Federal Lease-Purchase projects.

(f) To issue travel orders and to authorize or approve transportation of household goods and personal effects.

(g) To dispose of personal property of the Federal Housing Administration other than that acquired under insurance contracts.

(h) To issue orders for publication of notices and advertisements in newspapers, magazines and periodicals.

(i) To provide logistic, communications and other necessary services. Issues necessary Civil Defense identification for Headquarters and Field. Approves emergency relocation sites for Field Offices.

§ 200.72 Director of the Management Division.

To the position of Director of the Management Division there is delegated the following basic authority and functions:

(a) To direct comprehensive management engineering surveys of Washington and field operations and activities for the purpose of improving the efficiency, economy and effectiveness of operations and to develop specific recommendations for the accomplishment of these purposes.

(b) To assist in the development of the detailed plans and procedures for carrying out approved recommendations.

(c) To assist in, and to coordinate, the installation of approved recommendations.

(d) To evaluate the results of approved recommendations.

(e) To direct a comprehensive forms and records management program.

(f) To coordinate and maintain the FHA Manual, directives and other issuances and instructional material.

§ 200.73 Assistant Commissioner for Audit and Examination and Deputy.

To the position of Assistant Commissioner for Audit and Examination and under his general supervision to the position of Deputy Assistant Commissioner for Audit and Examination there is delegated the following basic authority and functions:

(a) To be responsible to the Commissioner for the coordination and general supervision of the Audit Division and Examination Division comprising the following functions:

(1) The maintenance of a continuing comprehensive fiscal audit program, both internal and external, including audit of mortgagees, mortgagors, and rental brokers for the purpose of providing the Commissioner with continuing assurance of the soundness and integrity of operations; conformity with applicable laws, regulations, policies, standards, and procedures;

(2) The maintenance of a continuing independent check on operations of the Federal Housing Administration for adherence to statutory and regulatory requirements and established procedures, policies, standards and management practices; the evaluation of attainment of objectives;

(3) The recommendation of investigation and action by responsible authorities in cases of suspected violation of statutes or contract terms.

(b) To act for the Commissioner in the determination of noncompliance with statutes, including the criminal statutes, rules, regulations, policies, procedures and instructions governing FHA operations and participants in FHA programs; to direct remedial action; and to clear, expedite, coordinate and provide liaison with respect to investigation requests to, and investigative reports from, the Office of the Administrator, Housing and Home Finance Agency.

(c) To act with the Commissioner in the determination of basic policy and to be a member of the Executive Board.

§ 200.74 Auditor and Deputy.

To the position of Auditor and under his general supervision to the position of Deputy Auditor there is delegated the following basic authority and functions:

(a) To be responsible for a continuing audit of the fiscal accounts of the Administration, including the fiscal accounts of the field offices, and the accounts of approved mortgagees not under governmental supervision, to determine compliance with the supervision requirements of the administrative regulations.

(b) To conduct audits of mortgagees and mortgagors participating in the insurance programs of the Administration, including on-site examination of fiscal records and accounts of such mortgagees and mortgagors.

(c) To conduct audits of the accounts and records of rental brokers including on-site audits and examinations of such accounts and records, to effect compliance with the fiscal and administrative requirements of the Administration.

§ 200.75 Director of the Examination Division and Deputy.

To the position of Director of the Examination Division and under his general supervision to the position of Deputy Director of the Examination Division there is delegated the following basic authority and functions:

(a) To conduct comprehensive periodic and special examinations of FHA operations and activities, except those of a fiscal and financial character, for adherence to statutory and regulatory requirements, established procedures, standards, and management practices; and to evaluate and report on compliance with requirements and attainment of objectives.

(b) To develop recommendations for further investigations by appropriate authorities in cases of suspected violations of existing statutes, regulatory requirements, or contract terms.

§ 200.77 Assistant Commissioner-Comptroller and Deputy.

To the position of Assistant Commissioner-Comptroller, and under his general supervision to the position of Deputy Assistant Commissioner-Comptroller, there is delegated the following basic authority and functions:

(a) To be responsible to the Commissioner for coordination and general supervision of the Procedures Branch, Financial Reports Branch, the Accounting Branch, the Insurance Branch, and the Fiscal Branch.

(b) To act with the Commissioner and under his direction in the determination of basic policy and be a member of the Executive Board.

(c) To be responsible to the Commissioner to devise and establish insurance fiscal servicing, accounting and fiscal procedures and to administer the fiscal policies and activities of FHA; and to provide or cause to be provided under his direction technical advice and guidance to all organizational elements of the FHA in the fields of accounting, electronic data processing, insurance fiscal servicing and fiscal matters.

(d) To be responsible to the Commissioner for the establishment and maintenance of appropriate accounting, fiscal and mortgage insurance controls and for the safeguarding of cash, notes, mortgages, negotiable instruments, checks, securities, debentures, contracts and properties.

(e) To develop and recommend policies, rules and procedures covering all phases of the settlement of Title I claims and the liquidation of defaulted Title I loans acquired in connection therewith.

(f) To exercise the authority of the Commissioner in any instance which is subject to the approval of the Commissioner in connection with the settlement of claims under section 2 of Title I of the National Housing Act and the liquidation of defaulted Title I loans acquired in connection therewith, including (1) the acceptance and execution of compromise agreements in the settlement of such claims; (2) the charge off of any amounts due FHA where the account has been compromised, or it is determined that the account is uncollectible or unrecoverable; (3) the execution of documents necessary to transfer title in and to any debt, contract claim, property, or security; (4) proofs of claim against bankrupt, insolvent or decedent estates; (5) releases of obligations to the FHA, including notes, judgments and other evidences of indebtedness; and (6) releases of liens of any sort held as security for such obligations, in those cases where the obligation has been paid in full.

(g) To direct and supervise periodic portfolio examinations of institutions insured under the provisions of section 2 of Title I of the National Housing Act.

(h) To recommend investments for the insurance funds of FHA, liquidation of investments and redemption of debentures and to maintain liaison with the Treasury Department in the execution of fiscal proposals.

(i) To certify financial statements.

(j) To designate certifying officers and to revoke such designation, to execute and submit to the Treasury Department necessary statements and schedules with respect thereto, and perform all functions pertaining to the bonding of FHA employees, pursuant to applicable statutes, regulations, and the standards and procedures of the Secretary of the Treasury thereunder.

(k) To submit to the Treasury Department (1) authorizations for (i) purchase of U.S. Government securities, pursuant to agreements between mortgagors or other depositors and FHA and (ii) sale and disposition of U.S. Government securities purchased for mortgagors or other depositors, received as a result of assignment of insured mortgages or as a result of other agreements; (2) for safekeeping, U.S. Government securities deposited in accordance with mortgagor corporate charters, regulatory or special agreements; and (3) requests for withdrawal of U.S. Government securities.

(l) To provide or cause to be provided under his direction an integrated electronic data processing service to all organizational elements of the FHA including consultative and advisory services relating to surveying, programming and cost analysis of proposed conversions to such processing.

(m) To develop and maintain or cause to be developed and maintained under his direction a program for the fiscal servicing of all Commissioner-held home and project mortgages; to execute or cause to be executed under his direction all vouchers for expenditures from mortgagor's escrow accounts, for payment of taxes on home and project properties where title is vested in the Commissioner and, with respect to home properties acquired by the Commissioner, vouchers for payment of excess proceeds to effect final settlement on certificates of claim; and to execute and receipt or cause to be executed and receipted under his direction applications and receipts for any payments received representing refunds of taxes or other payments made by the Commissioner in connection with property acquired by the Commissioner under the provisions of the National Housing Act.

(n) To keep or cause to be kept under his direction the seal of the Administration and to employ the seal in the execution of Certificates of Claim issued to mortgagees; to certify as to delegations of authority by the Commissioner, and as to the truth or accuracy of copies of original papers or documents in the possession of FHA; to prepare and execute notarized affidavits for the use of U.S. Attorneys in presenting the fiscal status of Commissioner-held mortgages at foreclosure trials; and to maintain the Archives files of FHA.

(o) To recommend to the Commissioner (1) the terms and conditions under which FHA offers to sell purchase money mortgages and assigned mortgage notes to approved mortgagees, (2) upon approval of the recommendation makes offers for the sale of such mortgages and assigned notes, and (3) executes in the name of the Commissioner acceptance of such offers.

(p) To execute satisfactions of Commissioner-held mortgages when the mortgage indebtedness has been paid in full.

(q) To endorse checks or other negotiable instruments for deposit or collection and loss drafts relating to insurance coverage on Commissioner-held home and project mortgages.

(r) To approve or cause to be approved under his direction all expenditures and to receipt or cause to be receipted under his direction all vouchers necessary to carry out the provisions of the National Housing Act.

(s) To certify or cause to be certified under his direction that all required documents, information and approvals respecting each transaction are present; verify or cause to be verified under his direction the accuracy of the computations, the consistency of the information included in the various documents and determine or cause to be determined under his direction that the transactions are in strict accordance with all applicable regulations, decisions and laws.

(t) To approve or disapprove or cause to be approved or disapproved under his direction amounts claimed by mortgagees in their claim for debentures and certificate of claim, including amounts claimed for operating, protecting and preserving properties prior to conveyance to the Commissioner; to execute Certificates of Claim and certify the requisitions to the Treasury Department for the issuance of debentures; to certify vouchers for cash settlement of claims; and to approve or disapprove the purchase of debentures submitted by mortgagees in connection with mortgage insurance premium payments.

(u) To extend or cause to be extended under his direction the period of time for submission of fiscal data or title evidence supporting a mortgagee's application for debentures.

(v) To maintain or cause to be maintained under his direction liaison with the General Accounting Office, Treasury Department and other agencies of the Government on accounting, insurance fiscal servicing and fiscal matters and to collaborate with such departments and agencies in the formation of accounting and fiscal programs.

(w) To cancel or cause to be cancelled under his direction insurance endorsement on insured mortgages where a joint request for termination is made by the mortgagor and mortgagee, or where the insurance endorsement is otherwise to be cancelled.

(x) To take any action authorized to be taken by any branch or office within his jurisdiction.

§ 200.78 Accounts Officer and Deputies.

To the position of Accounts Officer, and under his general supervision to the positions of Deputy Accounts Officer for General Accounting and Deputy Accounts Officer for Mortgage Note and Property Accounting, there is delegated the following basic authority and functions:

(a) To direct the activities of the Accounting Branch.

(b) To devise and establish accounting procedures and policies and to maintain official accounting records for all activities of the Administration.

(c) To provide technical advice and guidance to all organizational elements of the Administration in the field of accounting.

(d) To maintain liaison with the General Accounting Office, Treasury Department and other agencies of the Government on accounting matters and to collaborate with such departments and agencies in the formation of accounting programs.

(h) To recommend investments for the insurance funds of FHA, liquidation payments made by the Commissioner in connection with property acquired by claimed for operating, protecting and preserving properties prior to conveyance and agencies in the formation of accounting programs.

(e) To provide an integrated electronic data processing service to all organizational elements of the FHA including consultative and advisory services relating to surveying, programming and cost analysis of proposed conversions to such processing.

(f) To develop and maintain a program for the fiscal servicing of Commissioner-held home mortgages including the execution of vouchers for all related expenditures from mortgagors' escrow accounts.

(g) To execute vouchers for payment of taxes, insurance and repairs on home properties where title is vested in the Commissioner and for payments of excess proceeds to effect final settlement with mortgagees on certificates of claim and to mortgagors under provisions of the National Housing Act.

(h) To act with the Assistant Commissioner-Comptroller and under his direction in the determination of basic accounting policy.

§ 200.79 Insurance Officer and Deputy.

To the position of Insurance Officer, and under his general supervision to the position of Deputy Insurance Officer, there is delegated the following basic authority and functions:

(a) To direct the activities of the Insurance Branch.

(b) To devise and maintain procedures relating to the establishment of mortgage insurance records, the modification and termination of such insurance for home and project mortgages and to register Title I loans reported for insurance.

(c) To provide fiscal and technical advice and guidance with respect to mortgage modifications prior to administrative approval.

(d) To cancel insurance endorsement on insured mortgages when a joint request for termination is made by the mortgagor and mortgagee, or when the insurance endorsement is otherwise to be cancelled.

(e) To ascertain sufficiency of renewal and adjusted premium collections with respect to termination of insurance; authorize refund of unearned premiums collected or institute billing for the collection of premiums due.

(f) To authorize payment of earned distributive shares in the Participation Reserve Account of the Mutual Mortgage Insurance Fund to the rightful recipients thereof.

(g) To devise and maintain procedures relating to the fiscal servicing of Commissioner-held project mortgages and to execute vouchers for payment of all expenditures from mortgagor escrow accounts relating thereto.

(h) To develop and maintain fiscal procedures for the operation of Commissioner-owned project properties by agents of the Commissioner under contract for the management of such properties; to provide advice and guidance to those agents with respect to such fiscal procedures, and to execute vouchers for payment of real estate taxes, special assessments, hazard insurance, and repairs relating to such properties.

(i) To certify vouchers in payment of Title I claims representing the insurable loss sustained and to refund to the remitter of record any collections obtained in excess of the established indebtedness.

(j) To act with the Assistant Commissioner-Comptroller and under his direction in the determination of basic insurance fiscal servicing policy.

§ 200.80 Fiscal Officer and Deputy.

To the position of Fiscal Officer, and under his general supervision to the position of Deputy Fiscal Officer, there is delegated the following basic authority and functions:

(a) To direct the activities of the Fiscal Branch.

(b) To devise and establish fiscal procedures and to administer the fiscal policies and activities of the Administration.

(c) To approve all operating and property expenditures and receipt vouchers necessary to carry out the provisions of the National Housing Act upon his determination that they are in accordance with applicable regulations, decisions and laws.

(d) To certify that all required documents, information and approvals respecting operating and property expense and debenture transactions are present; verify the accuracy of the computations, the consistency of the information included in the various documents; and determine that the transactions are in strict accordance with all applicable regulations, decisions and law.

(e) To approve or disapprove amounts claimed by mortgagees in debentures or cash settlements, including amounts claimed for operating, protecting and preserving properties prior to conveyance to the Commissioner.

(f) To extend the period of time for submission of fiscal data or title evidence supporting a mortgagee's application for debentures.

(g) To execute in the Commissioner's name, in connection with Section 2 of Title I of the National Housing Act, (1) documents necessary to transfer title in and to any debt, contract claim, property, or security; (2) proofs of claim against bankrupt, insolvent or decedent estates; (3) releases of obligations to the FHA, including notes, judgments and other evidences of indebtedness; and (4) releases of liens of any sort held as security for such obligations, in those cases where the obligation has been paid in full; and to employ the seal of the Administration to certify as to the truth or accuracy of such documents, proofs, or releases.

(h) To maintain liaison with the General Accounting Office, Treasury Department and other agencies of the Government on fiscal matters and to collaborate with such departments and agencies in the formation of fiscal programs.

(i) To act with the Assistant Commissioner-Comptroller and under his direction in the determination of basic fiscal policy.

§ 200.81 Assistant Commissioner for Property Disposition and Deputy.

To the position of Assistant Commissioner for Property Disposition and under his general supervision to the position of Deputy Assistant Commissioner for Property Disposition there is delegated the following basic authority and functions:

(a) To direct the activities of the Property Management Division.

(b) To formulate procedures for the operation and management of all properties conveyed to the Federal Housing Commissioner.

(c) To develop and maintain a program for the management, operation and disposition of all properties conveyed to the Federal Housing Commissioner and, as required, to operate and manage such properties in accordance with general policies promulgated by the Property Management Committee and approved by the Commissioner, including authority with respect to such property to:

(1) Approve all offers to rent or purchase, except that offers to purchase 12 or more living units acquired by the Commissioner under any title of the Act shall be subject to the approval of the Property Disposition Committee.

(2) Make repairs, alterations and improvements.

(3) Execute such contracts, leases, assignments and instruments as may be necessary in the rental or sale of such properties other than deeds or other documents in connection with the conveyance of title, deeds of release, assignments or satisfactions of mortgages, deeds of trust or other liens taken as security in connection therewith.

(4) Authorize expenditures.

(d) To handle and dispose of claims of the mortgagee against the mortgagor or others arising out of mortgage transactions and assigned to the Commissioner in connection with home mortgage insurance operations.

(e) To review and evaluate default experience with respect to FHA insured home mortgages and provide technical advice and guidance to the field offices in their supervision of the home mortgage servicing practices of approved mortgagees.

(f) To act with the Commissioner and under his direction in the determination of basic policy and be a member of the Executive Board.

DELEGATIONS TO COMMITTEES

§ 200.85 Executive Board.

(a) *Members.* The committee called the Executive Board is comprised of the following members: Commissioner, Chairman; Deputy Commissioner, Vice Chairman; General Counsel; Assistant Commissioner for Field Operations; Assistant Commissioner for Multifamily Housing Operations; Assistant Commissioner for Technical Standards; Assistant Commissioner for Programs; Assistant Commissioner for Audit and Examination; Assistant Commissioner for Administration; Assistant Commissioner-Comptroller; and Assistant Commissioner for Property Disposition.

(b) *Functions.* The functions of the Executive Board are to consider and advise with respect to basic policy, plans

and general program matters of the Administration.

§ 200.86 Security Committee.

(a) *Members.* The Security Committee is comprised of the following members: Personnel Security Officer, Chairman; Assistant Commissioner for Administration, Vice Chairman; and Assistant Commissioner for Field Operations.

(b) *Functions.* The functions of the Security Committee are:

(1) To make recommendations to the Commissioner from time to time with respect to the designation of sensitive positions under the Security Regulations of the FHA, or the revocation of such designations.

(2) To advise with and make recommendations to the Commissioner regarding any security matter which the Personnel Security Officer may bring before the committee for advice or consultation.

§ 200.87 Management Improvement Committee.

(a) *Members.* The Management Improvement Committee is comprised of the following members: Director of Management Division, Chairman; Director of Personnel, Vice Chairman; and one designee of each of the following: Assistant Commissioner-Comptroller; Assistant Commissioner for Multifamily Housing Operations; Assistant Commissioner for Technical Standards; Assistant Commissioner for Field Operations; and Director of Budget Division.

(b) *Functions.* The functions of the Management Improvement Committee are to maintain and operate an FHA Employee Suggestion System within the framework of the over-all Employee Awards Program.

§ 200.88 Property Disposition Committee.

(a) *Members.* The Property Disposition Committee is comprised of the following members: Deputy Commissioner, Chairman; General Counsel; Assistant Commissioner for Field Operations; Assistant Commissioner for Multifamily Housing Operations; Assistant Commissioner for Technical Standards; Assistant Commissioner for Property Disposition; and such other members as the Commissioner shall designate.

(b) *Functions.* The functions of the Property Management Committee are:

(1) To pass upon and determine the action to be taken with respect to the acceptance or rejection of any offer to purchase a property of 12 or more living units or any mortgage acquired by the Commissioner in connection with multifamily housing mortgage insurance under any title of the Act, the sale and terms of sale of mortgages taken as security in connection with the sale of such properties, and to establish general policies with respect to the disposition of acquired properties and mortgages. The minutes of the Committee reflecting its determinations shall constitute the basis of acceptance or rejection of such offers and the execution of all documents and instruments relating and incident thereto by the Assistant Commissioner for Property Disposition or his Deputy.

(2) To determine whether or not an expenditure is "necessary to carry out the provisions" of Titles I, II, VI, VII, VIII and IX as such term is used in section 1 of the National Housing Act, and to approve such expenditure for and on behalf of the Commissioner whenever such a determination and approval is, in the opinion of the General Counsel, necessary to support the legal authority of the Commissioner to make such expenditure.

(3) In connection with the functions of this committee, the Chairman is authorized to execute in the official name of the Commissioner, as his agent, all contracts of sale, deeds or any other documents or instruments necessary in connection with the sale of properties or with conveyance of title of such properties.

(4) This committee shall meet at the call of the Chairman and shall maintain minutes of each meeting. Such minutes shall be dated, consecutively numbered and shall be signed by each member who attended the meeting. The original of such minutes shall be retained by the Assistant Commissioner-Comptroller, in the official FHA records.

§ 200.89 Substantial Compliance Committee.

(a) *Members.* (1) The Substantial Compliance Committee is comprised of the following members: Assistant Commissioner-Comptroller, Chairman; Assistant Commissioner for Administration; Assistant Commissioner for Programs; Assistant Commissioner for Field Operations; and the General Counsel, or their designees.

(2) Three members shall constitute a quorum.

(b) *Functions.* The functions of the Substantial Compliance Committee are to waive compliance with regulations heretofore or hereafter prescribed with respect to the interest and maturity of, and the terms, conditions, and restrictions under which loans, advances of credit and purchases may be insured under section 2 of Title I of the National Housing Act if, in the judgment of the committee, the enforcement of such regulations would impose an injustice upon an insured institution which has substantially complied with such regulations in good faith and has refunded or credited any excess charge made, and if such waiver does not involve an increase of the obligation which would have been involved if the regulations had been fully complied with.

(c) *Minutes.* This committee shall meet at the call of the Chairman and shall maintain minutes of each meeting. Such minutes shall be dated, consecutively numbered and shall be signed by each member who attended the meeting. The original of such minutes shall be retained by the Assistant Commissioner-Comptroller, in the official FHA records.

§ 200.90 Finance Committee.

(a) *Members.* The Finance Committee is comprised of the following members: Director, Research and Statistics Division, Chairman; Assistant Commissioner-Comptroller, and the Associate General Counsel.

(b) *Functions.* The functions of the Finance Committee are;

(1) To consider and make recommendations to the Commissioner for the investment of moneys held in the various insurance funds, not needed for the current operations of the FHA, in bonds or other obligations of the United States, or in bonds or other obligations guaranteed as to principal and interest by the United States.

(2) To make recommendations to the Commissioner from time to time with respect to (i) the liquidation of investments held in the name of the Commissioner and (ii) redemption of debentures.

(3) To make recommendations to the Commissioner with respect to the distribution between the General Surplus Account and the Participating Reserve Account of the net income received or net loss sustained by the Mutual Mortgage Insurance Fund in any semiannual period.

(4) To make recommendations to the Commissioner for the establishment of annual valuation reserves on assets acquired pursuant to the terms of insurance contracts under the various insurance funds.

(5) To advise with and make recommendations to the Commissioner with respect to other matters referred to the Committee by the Commissioner.

(c) *Minutes.* The Finance Committee shall meet at the call of the Chairman and shall maintain minutes of each meeting. The minutes shall be dated, consecutively numbered and shall be signed by each member who attended the meeting. The original of the minutes shall be retained by the Assistant Commissioner-Comptroller, in the official FHA records.

MISCELLANEOUS DELEGATIONS

§ 200.95 Field Office Chiefs of Operations.

To the position of Field Office Chief of Operations, and to each of them, there is delegated the following duties and functions:

(a) To execute regulatory agreements and to issue eligibility statements and commitments for insurance and to execute insurance contracts pursuant to such commitments.

(b) To approve a change in amount, a change in term, extension of the date of commencement of construction, extension of the expiration date, or any other modification in the commitment for insurance or insurance contract.

(c) To approve permissible refunds of processing fees.

(d) To consent to the release of mortgagors.

(e) To consent to the release of portions of mortgaged property from the lien of the mortgage.

(f) To approve or disapprove for mortgage insurance advances of mortgage money during construction and execute such instruments as may be necessary in connection therewith.

(g) To approve or disapprove "Change Orders" during construction.

(h) To direct field office physical inspections of properties covered by

insured project mortgagees, examination of operating reports and mortgagee annual inspection reports, and to institute corrective action to cure deficiencies disclosed by such inspections and reports.

(i) To approve or disapprove requests from mortgagors for permission:

(1) To furnish rental units.

(2) To provide tenants with equipment or services not contemplated in the original processing of the application for mortgage insurance or, in the case of a Commissioner-held purchase money mortgage, not contemplated at the time of sale.

(3) To alter, modify, or add to the physical structure.

(4) To withdraw funds from replacement reserves for replacement of items originally scheduled.

(j) To approve or disapprove rent increases and seasonal rental charges in rental projects covered by insured or Commissioner-held mortgages and to investigate and determine action to be taken on tie-in charges for apartment, garage, furniture, and equipment rentals.

(k) To approve or disapprove the plan of management of cooperative mortgagors under an insured mortgage.

(l) In connection with cooperative projects covered by insured mortgages, to determine the adequacy of carrying charges and approve or disapprove such charges.

(m) To exercise the authority of the Commissioner, where required, in granting prior credit approval under the provisions of Title I of the National Housing Act and regulations thereunder.

(n) To approve or disapprove requests of a mortgagee to obtain title by deed in lieu of foreclosure to property covered by an insured home mortgage.

(o) To approve or disapprove requests of mortgagees for extension of the regulatory period for commencement of foreclosure, the regulatory period for election to assign the mortgage to the Commissioner, and the regulatory period within which to tender properties to the Commissioner.

(p) To approve or disapprove plans to reinstate defaulted Commissioner-held mortgages and to initiate action to cure defaults of Commissioner-held and insured mortgages.

(q) In connection with the new home loan provisions of the regulations issued pursuant to Title I of the National Housing Act, to approve the sale by insured institutions of acquired property where the insured institution exercises its option to sell the property in the open market in lieu of conveyance to the Commissioner.

(r) To assess late charges against delinquent mortgagors under Commissioner-held home mortgages.

(s) To determine and initiate action to acquire properties under defaulted Commissioner-held home mortgages by foreclosure.

(t) To direct the affairs of mortgagor corporations when control has been assumed by the Federal Housing Commissioner as preferred stockholder.

(u) To execute contracts for supplies and services in accordance with the provisions of the Field Operating Manual and as approved by the Assistant Commissioner for Property Disposition either specifically or as a part of an acquired property management program.

(v) To execute contracts for the sale of any properties and projects owned by the Federal Housing Commissioner upon approval of any such sale by competent authority.

(w) In connection with the sale of Commissioner-owned properties or projects, to consent to the assignment of the interest of the contract purchaser under a contract for deed and to the substitution of mortgagor under a mortgage held by the Commissioner.

(x) To execute applications and other documents in connection with any function which the Federal Housing Administration may perform for any other agency or agencies of the United States.

(y) To endorse loss drafts and checks for settlement of claims for insurance losses on insured mortgages and Commissioner-held mortgages, both home and multifamily.

§ 200.96 Field Office Directors and Assistants and Directors of Zone Multifamily Housing Offices.

To the position of Field Office Director, and to each of them; to the position of Assistant Field Office Director, and to each of them, and with respect to insurance and servicing of multifamily housing project mortgages to the position of Director of Zone Multifamily Housing Office, and to each of them, there is delegated the duties and functions as set forth in § 200.95.

§ 200.97 Assistant Commissioner for Field Operations and Deputy and Zone Operations Commissioners and Deputies.

To the position of Assistant Commissioner for Field Operations but not to the positions of Deputy Assistant Commissioner for Field Operations, Zone Operations Commissioner and Deputy Zone Operations Commissioner, there is delegated the following duties and functions as they apply to home mortgage insurance operations:

(a) To exercise the authority of the Commissioner under the Administrative Regulations pursuant to any section or title of the National Housing Act in any instance requiring the approval of the Commissioner.

(b) (1) To approve the insurance of mortgages taken as security in connection with the sale of properties conveyed to the Federal Housing Commissioner.

(2) To the position of Assistant Commissioner for Field Operations, to the position of Deputy Assistant Commissioner for Field Operations and to the position of Zone Operations Commissioner, and to each of them, and to the position of Deputy Zone Operations Commissioner, and to each of them, there is delegated, as they apply to home mortgage insurance operations, the duties and functions as set forth in § 200.95.

§ 200.98 Assistant Commissioner for Multifamily Housing Operations and Directors under his supervision.

To the position of Assistant Commissioner for Multifamily Housing Operations, to the position of Director, and to each of them under his supervision, there is delegated the following duties and functions as they apply to the insurance and servicing of multifamily housing mortgages:

(a) To exercise the authority of the Commissioner under the Administrative Regulations pursuant to any section or title of the National Housing Act in any instance requiring the approval of the Commissioner.

(b) (1) To approve the insurance of mortgages taken as security in connection with the sale of properties conveyed to the Federal Housing Commissioner.

(2) To the positions in this section there are delegated the duties and functions as set forth in § 200.95.

§ 200.99 Assistant Commissioner for Property Disposition.

To the position of Assistant Commissioner for Property Disposition there is delegated the duties and functions set forth in § 200.95 as they apply to the acquisition, maintenance, and disposition of real property and the servicing of one- to four-family mortgages.

§ 200.100 Assistant Commissioners.

To the position of Assistant Commissioner, and to each of them, in addition to the authority granted under the provisions of section 204 (g) of the National Housing Act, there is delegated the following duties and functions:

(a) To execute in the name of the Commissioner proofs of claim against bankrupt, insolvent and decedent estates.

(b) To execute releases of obligations, including notes, judgments and other evidences of indebtedness, and to release liens of any kind held as security for such obligations.

(c) To execute the power and authority vested in the Commissioner under the regulations governing property and obligations held by the Federal Housing Commissioner and approved by the Secretary of the Treasury.

§ 200.101 Division Directors and their Superiors, the General Counsel, Field Office Directors and Assistants, and others.

To the position of Assistant Commissioner and Deputy Assistant Commissioner, Special Assistant and Deputy Special Assistant, Assistant to the Commissioner, Defense Coordinator, General Counsel and Associate General Counsel, Division Director and Deputy Division Director, Zone Operations Commissioner and Deputy Zone Operations Commissioner, Field Office Director, and to each of them, there is delegated the duty and function to certify that official long distance telephone calls made were necessary in the interest of the Government,

pursuant to 31 U.S.C. 680a (section 4 of the Act approved May 10, 1939, 53 Stat. 738).

§ 200.102 Classified Information Control Officer.

To the position of Classified Information Control Officer there is delegated the following duties and functions:

(a) To receive all classified information addressed to the Federal Housing Administration and to be responsible for the proper dissemination thereof.

(b) To safeguard all classified information in accordance with established security standards.

(c) To keep all officials of the FHA advised of security standards and requirements with respect to the safeguarding and dissemination of classified information.

§ 200.103 Personnel Security Officer and Deputy.

To the position of Personnel Security Officer and under his direction and supervision to the position of Deputy Security Officer there is delegated the following duties and functions:

(a) To be responsible for the establishment and administration of a security program in the Federal Housing Administration.

(b) To participate in conferences and discussions as the security representative of the FHA with officials of other government agencies for the purpose of making effective the National Personnel Security Program.

(c) To clear personnel of the FHA for sensitive positions.

(d) To evaluate security reports and to take final action in security cases of all types.

(e) To participate in proceedings before security hearing boards in any instance where an FHA employee is involved.

(f) To prepare reports and releases as required by the Attorney General and the Civil Service Commission in the administration of the FHA security program.

§ 200.104 Assistant Commissioner for Field Operations, Zone Operations Commissioners, Directors, Assistant Directors, Administrative Officers and Chief Clerks in FHA Field Offices, Assistant Commissioner for Administration, Director of Personnel and Deputy Director of Personnel.

To the Assistant Commissioner for Field Operations, Zone Operations Commissioners, Directors, Assistant Directors, Administratice Officers and Chief Clerks in FHA Field Offices, the Assistant Commissioner for Administration, the Director of Personnel, and the Deputy Director of Personnel, pursuant to 5 U.S.C. 16a, there is delegated the authority to administer the oath required by section 1757, Revised Statutes, as amended (5 U.S.C. 16) incident to entrance into the executive branch of the Federal government, or any other oath, required by law in connection with employment therein, such oath to be administered without charge or fee and to have the same force and effect as oaths administered by officers having seals.

The authority of this section covers the administration of Appointment Affidavits, Standard Form 61, and oaths to witnesses in any matter pending before the United States Civil Service Commission.

§ 200.105 National emergency.

To all Field Office Directors, Assistant Directors and Chief Underwriters there is delegated, immediately upon declaration by the President of a national emergency or in event of an enemy attack, authority to designate certifying officers and to revoke such designations and to execute and submit to the Treasury Department necessary statements and schedules with respect thereto, pursuant to Public Law 389, approved December 29, 1941 (31 U.S.C. 82b–82e), and the standards and procedures of the Secretary of the Treasury thereunder. This authority shall be exercised only in the event the Commissioner is unable to act in his official capacity.

Subpart E—Mortgage Insurance Procedures and Processing

§ 200.140 Scope of subpart.

This subpart is confined to general procedures and processing covering mortgage insurance irrespective of the particular program involved. More specific information regarding procedures and processing, including variances under the several titles and sections of the National Housing Act, are treated in other provisions of this chapter.

§ 200.141 Procedure in general.

All mortgage insurance programs involve four basic steps. First, applications for insurance; second, commitments for insurance; third, insurance endorsements; and fourth, claims for losses.

Application for Insurance

§ 200.142 Form and filing.

Any financial institution approved by the Commissioner as a mortgagee may apply for mortgage insurance. The application form may be obtained from any Federal Housing Administration field office. The application must be submitted to the office having jurisdiction over the area in which the property described in the application and offered as security is located.

§ 200.143 Purpose and content.

Every application, whether for insurance of a home type or project type mortgage, sets forth the required information to enable FHA to determine eligibility under a particular program. The eligibility consideration covers three general areas as follows:

(a) The eligibility of the proposed loan under the statute, i. e., term, interest rate, mortgage amount, and ratios of loan to value or replacement cost.

(b) The eligibility of the property with respect to compliance with FHA statutory and regulatory requirements.

(c) (1) The eligibility of the mortgagor with regard to the mortgagor's ability to carry and pay the proposed mortgage debt.

(2) Applications are designed to meet the requisites of the several programs. Accordingly, the applications will call for certain supplemental information, such as drawings and specifications, financial statements, exhibits and other information appropriate to enable the FHA to make the necessary determinations concerning eligibility.

§ 200.144 Fees.

Each application must be accompanied by a fee for examination in an amount in effect on the date the application is filed as indicated by the regulations covering the particular insurance program.

§ 200.145 Technical analysis and underwriting processing.

(a) When an application for mortgage insurance is received in the Field Office it is recorded and a receipt issued therefor. The proposed transaction is then analyzed to determine whether the application and supporting information is in proper form for underwriting processing.

(b) Underwriting processing involves consideration of the elements having to do with eligibility for insurance including review of the planning, construction, and specifications, cost estimation and valuation, and credit analysis. The findings are included in a report and recommendation which is the basis for the commitment.

§ 200.146 Acceptance, rejection and reconsideration.

(a) If an application for mortgage insurance meets the eligibility requirements a commitment for insurance is issued.

(b) If the application for mortgage insurance is not eligible for processing or does not qualify, this fact is reported to the applicant together with the reason for the rejection.

(c) A rejected application for mortgage insurance may be reconsidered upon written request to the Field Office which rejected the application.

Commitment for Insurance

§ 200.147 Issuance of commitment.

After a determination that the mortgagor and the property offered for security meets the standards and requirements as to eligibility, a commitment is prepared and forwarded over the signature of the Authorized Agent to the approved mortgagee setting forth the terms and conditions under which the mortgage transaction will be insured. The commitment is a binding contract between the FHA and the mortgagee presenting the application.

§ 200.148 Types of commitments.

(a) *Home mortgages.* In connection with home mortgages the commitment issued may be conditional or firm.

(1) *Conditional commitment.* A conditional commitment is requested in a case where the mortgagor is unknown and therefore cannot be specified in the application. The Commissioner agrees to insure a mortgage on specified property in an amount and under the terms specified, provided the property is sold to a purchaser who is satisfactory to the FHA as a borrower.

(2) *Firm commitment.* A firm commitment is requested where the mortgagee desires insurance of a mortgage on specified property with a named mortgagor in an amount and on terms set forth in the commitment.

(b) *Project mortgages.* In connection with project mortgages the mortgagee may specify which of two types of commitments he desires.

(1) *Commitment for insurance of advances.* A commitment for insurance of advances specifies that the FHA will insure construction advances, subject to compliance with the commitment terms.

(2) *Commitment to insure upon completion.* A commitment to insure upon completion does not include construction advances, but provides that the FHA will insure the mortgage upon completion of the project subject to compliance with the commitment terms.

§ 200.149 Terms and conditions.

(a) The commitment sets forth the exact conditions under which the FHA will insure the mortgage loan. It indicates the maximum eligible term of years, the amount of such loan, the interest rate and the amount of the monthly installment, including principal and interest. In addition, in connection with proposed construction there may be provision for structural requirements and the number and type of inspections necessary. In the case of project mortgages, the commitment may indicate a schedule of advances which will be insured upon a finding that such advances are made in accordance with the commitment.

(b) A commitment is for a definite period of time and contains cancellation conditions which permit FHA to cancel the commitment in case of non-compliance with its terms. Upon full compliance with the terms of the commitment instrument, the FHA is legally bound to endorse the mortgage for insurance.

INSURANCE ENDORSEMENT

§ 200.150 Request for endorsement.

When all conditions of the commitment are fully met the commitment, together with all supporting documents such as the note, mortgage and any other exhibits as required by the terms of the commitment, are returned to the FHA by the mortgagee with request for endorsement for insurance.

§ 200.151 Final review.

Upon receipt of a request for endorsement the FHA makes a final review of the commitment and the supporting documents to determine that all are in proper order and that the terms and conditions have been fully performed.

§ 200.152 Endorsement for insurance.

When it has been determined that the terms and conditions of the commitment have been fully complied with, the FHA insures the mortgage and evidences the insurance by the Authorized Agent's signature in the endorsement panel on the mortgage note which is then returned to the mortgagee. After this endorsement the mortgagee is entitled to the benefits of insurance subject to compliance with the administrative regulations which are, in effect, a part of the insurance contract.

CLAIMS FOR LOSSES

§ 200.153 Presentation of claim.

In the event of a default of an insured mortgage the mortgagee presents a claim for insurance benefits. The application form for debentures and certificate of claim may be obtained from the Headquarters Office in Washington and is filed with the FHA Comptroller in Washington, D. C.

§ 200.154 Notice of default.

Upon default in a mortgage the mortgagee submits a notice of default status to the FHA Insuring Office having jurisdiction over the area wherein the mortgage security is located.

§ 200.155 Claim requirements.

To perfect its claim for payment the mortgagee is required either to assign the mortgage to the Commissioner or tender to him a good merchantable title to the property covered by the insured mortgage. In the home mortgage programs the mortgagee is required to foreclose the insured mortgage and obtain title to the property under a deed conveying good merchantable title. In project mortgage programs the foregoing procedure may be followed or the mortgagee has an alternative option to assign the project mortgage to the Commissioner. If the latter option is exercised the claim for insurance is reduced by one percent of the amount of the mortgage.

§ 200.156 Settlement of claims.

Upon approval of title conveyance thereof and delivery of possession of the property to the Commissioner, debentures and a certificate of claim are issued to the mortgagee in accordance with a computation provided by statute for the particular program. The debentures include an amount equal to the unpaid principal of the mortgage plus certain other items such as advances made for hazard insurance, payment of taxes, FHA mortgage insurance premium and a portion of foreclosure expenses. The terms of the statute strictly control the amounts which may be allowed in debentures. Certain expenditures made by the mortgagee, not allowed in the debentures, are included in the certificate of claim.

§ 200.157 Provisions and characteristics of debentures.

(a) *Series and fund.* Debentures are issued in appropriate series and are the obligation of and issued in the name of the particular mortgage insurance fund under which the mortgage is insured.

(b) *Registration, denomination and execution.* Debentures are issued in registered form and in denominations of $50, $100, $500, $1,000, $5,000 and $10,000. Debentures are signed by the Federal Housing Commissioner by facsimile signature and imprinted with the seal of the Federal Housing Administration.

(c) *Rate of interest and interchangeability.* Debentures carry a rate of interest prescribed by the Commissioner but not in excess of an annual rate determined by the Secretary of the Treasury in accordance with a prescribed statutory formula involving yields or prices of outstanding marketable obligations of the United States. Debentures of the same series bearing the same interest rate and having the same maturity date shall be freely interchangeable between the various authorized denominations.

(d) *Negotiability and redemption.* Debentures are negotiable and are fully guaranteed as to principal and interest by the United States. Debentures are redeemable on call issued by the Commissioner.

(e) *Payment of principal and interest.* Principal and interest of debentures shall be payable when due at the Treasury Department, Washington, D.C., or at any Government agency or agencies in the United States which the Secretary of the Treasury may from time to time designate for that purpose. The principal and interest shall be payable to the registered owner whose name shall be inscribed on the debentures or to the assignee as shown by executed assignments.

(f) *Transfer and use.* Debentures are fully transferable and may be freely sold or assigned. Debentures may be used by approved mortgagees in lieu of cash for payment of FHA mortgage insurance relating to the same mortgage insurance fund under which the debentures are issued.

§ 200.158 Applicability of Treasury regulations to debenture transactions.

The United States Treasury Department is the agent for the Commissioner in connection with transactions and operations relating to debentures. The general regulations of the United States Treasury Department governing transactions and operations in United States registered bonds, and the payment of interest thereon, are adopted, so far as applicable, as the regulations of the Commissioner for similar transactions and operations in debentures, including the payment of interest on, with the following exceptions:

(a) *Payment of final interest on maturing or called debentures.* If the notice of maturity or call for redemption shall so provide, the final installment of interest payable on any debentures at maturity or earlier redemption date may be paid with the principal in accordance with the assignments on the debentures instead of by separate check drawn to the order of the registered payee and forwarded to him at his address of record.

(b) *Closing of transfer books.* If the call for redemption shall so provide, the

books maintained by the Treasury Department may be closed against transfers and denominational exchanges in debentures for three full months preceding any interest payment date with respect to any debentures called for redemption on such interest payment date.

(c) *Detached assignments.* Detached assignments shall be recognized and accepted in any particular case in which the use of detached assignments is specifically authorized by the Treasury Department. Any assignment not made upon the debentures is considered a detached assignment.

(d) *Assignments by corporations for redemption for their own account.* A debenture registered in the name of, or assigned to, a corporation will be paid to such corporation, at maturity or earlier redemption date, upon an appropriate assignment for that purpose executed on behalf of the corporation by a duly authorized officer thereof. An assignment so executed and duly attested to in accordance with Treasury Department regulations will ordinarily be accepted without proof of the officer's authority. In all cases within this exception, payment will be made only by check drawn to the order of the corporation.

§ 200.159 Relief on account of lost, stolen, destroyed, mutilated or defaced debentures.

The statutes of the United States and the regulations of the Treasury Department governing relief on account of the loss, theft, destruction, mutilation or defacement of United States securities, so far as applicable and as necessarily modified to relate to debentures, are adopted as the regulations of the Commissioner for the issuance of substitute debentures or the payment of lost, stolen, destroyed, mutilated or defaced debentures.

§ 200.160 Redemption of debentures prior to maturity.

Debentures of any series, if so provided in the text thereof, may be redeemed at the option of the Federal Housing Commissioner, with the approval of the Secretary of the Treasury, in whole or in part, at par and accrued interest on any interest day or days on 3 months' notice of redemption given in such manner as the Commissioner shall prescribe. In case of partial redemption, the debentures to be redeemed shall be determined by such method as may be prescribed by the Commissioner.

§ 200.161 Administration of debenture transactions.

The Secretary of the Treasury or the Acting Secretary of the Treasury is authorized and empowered, on behalf of the Commissioner, to administer the regulations governing any transactions and operations in debentures, to do all things necessary to conduct such transactions and operations, and to delegate such authority at his discretion to other officers, employees, and agents of the United States Treasury Department. At his discretion the Secretary, the Under Secretary, or any Assistant Secretary of the Treasury acting by direction of the Secretary, is authorized to waive any such regulation on behalf of the Commissioner in any particular case where a similar regulation of the Treasury Department with respect to United States bonds or interest thereon would be waived.

§ 200.162 Certificates of claim.

The certificate of claim issued to the mortgagee at the time debentures are issued constitutes an agreement by the FHA that after the FHA has recovered its investment in a particular property any excess over and above such investment is available for payment on the certificate of claim. Certificates of claim bear interest at the rate of 3 percent per annum.

Subpart F—Property Improvement Loan Procedures and Processing

LOAN TRANSACTION

§ 200.165 Lender's application for insurance.

Any financial institution which has qualified as an approved lender may apply to the Federal Housing Administration for insurance against losses on account of personal loans made for alterations, repairs or improvements upon or in connection with existing structures which substantially protect or improve basic livability or utility as well as insurance against losses in connection with the building of new nonresidential farm and non-farm structures. The maximum principal amount of such loans is set forth in section 2, Title I of the National Housing Act.

§ 200.166 Lending area.

(a) The Federal Housing Administration expects a qualified lender to confine its Property Improvement loan business to the trading area usually served by the institution in its normal operations. The lender must be in a position to investigate credits, make spot checks of the improvements being financed, and have its own employee or qualified representative make personal contact with delinquent borrowers.

(b) Prospective borrowers may obtain a list of qualified lenders in the particular area by writing to the Federal Housing Administration field office in the locality or to the Headquarters Office in Washington, D. C. Prescribed forms for use in connection with Property Improvement loans are made available by lenders.

§ 200.167 Credit investigation of borrower.

Property Improvement loans are primarily character loans, and the credit standing and credit instrument of the borrower are of primary importance. In accepting a contract of insurance the lender assumes the responsibility of applying sound principles in the evaluation of credit. The borrower applicant must furnish the lender with an executed credit application on a form approved by the Commissioner and disclosing information sufficient to satisfy the lender that the applicant represents an acceptable credit risk, including information that the loan is for the alteration, repair or improvement of property in which the borrower has an eligible interest as owner or lessee. The determination as to the eligibility of a loan for insurance and the approval of borrower's credit and all other details of the transaction are handled by the lender, without prior examination or approval of the transaction by the Federal Housing Administration, except as specifically required by the regulations.

§ 200.168 Other requirements for a Property Improvement loan.

The note or other evidence of the obligation taken by the insured must be valid and enforceable against the borrower and must be payable in installments. The borrower must have either a fee title, life estate, a purchaser's interest in a land contract, or a lease having a fixed term expiring not less than six calendar months after the maturity of the loan. The fee title or life estate may be subject to a mortgage or other lien. The regulations provide maximum maturity and maximum amounts for loans of various classes and sets forth maximum financing charges and certain items which are considered ineligible for loans.

§ 200.169 Direct borrower loans.

The Property Improvement loan may be initiated by a borrower who gives his credit application directly to a lender. The proceeds of a loan thus made are delivered directly to such borrower without the intervention or participation of a dealer or other intermediary.

§ 200.170 Loan through a dealer.

Also eligible as Property Improvement loans are dealer-originated cases where the dealer or contractor first obtains a credit application for the loan from the borrower and, after completing the work, has a note and completion certificate signed by the borrower. The dealer presents these documents to the lender and receives the proceeds of the loan, after the lender determines that the transaction is eligible for insurance. The Federal Housing Administration does not approve dealers for participation in the Property Improvement loan program. This is a responsibility of the lender which by investigation must determine that the dealer is reliable, financially responsible and qualified to perform satisfactorily the work to be financed and is equipped to extend proper service to

the customer. The lender also makes

puting the insurance premium which will

faulted obligation. In addition, the

of any kind in connection with insur-

the customer. The lender also makes the initial determination that the transaction is or is not insurable.

§ 200.171 Notice to borrower.

At least six calendar days prior to making disbursement to a dealer the lender is required to give the borrower written notice of the insured's intention to disburse the proceeds of the loan if the application is approved. Although the borrower need not acknowledge receipt of the notice the lender must have a record of having mailed or delivered such notice.

DISBURSEMENT

§ 200.172 Disbursement of proceeds to dealer.

In connection with all loans not made directly to the borrower, the lender must have investigated and approved the dealer and have in its possession, properly signed and dated:

(a) Completion certificate signed by borrower indicating work or materials have been satisfactorily completed or delivered by dealer.

(b) Copy of dealer's contract or sales agreement signed by borrower and dealer describing the type and extent of improvements to be made and the material to be used.

(c) Borrower's authorization certificate, if note is payable to lender.

§ 200.173 Disbursement of proceeds to borrower.

The lender may disburse the proceeds of the note directly to the borrower by cash, by check or money order drawn solely in favor of the borrower, or by crediting the borrower's account. In such transactions, the dealer does not participate in the disbursement in any manner and the borrower has complete control of the funds at all times.

REPORT AND RESERVE

§ 200.174 Report of loans.

Within 31 days after the loan is made or the note is purchased from the dealer the lender submits to the Federal Housing Administration individual reports setting forth on a prescribed form the details of each transaction. This information, including the name of the borrower, the location of the property, the amount of loan advanced, the finance charges, the date of the note, and the terms of payment is the basis for computing the insurance premium which will be due and payable by the lender and is the official record of the transaction with the Administration. This report results in the automatic insurance of the loan as soon as the required insurance premium is paid.

§ 200.175 Insurance charge.

The regulations provide for an annual insurance charge based on a fractional percentage of the net proceeds of each loan reported for insurance. The lender is billed once a month on all loans reported for insurance during the previous period the receipt of which have been acknowledged by the Commissioner.

§ 200.176 Insurance reserves.

For each lender holding a contract of insurance, there is established by the Federal Housing Administration a general insurance reserve the amount of which is based upon the number of loans the institution reports for insurance during certain periods. For each eligible loan reported by a lender and accepted for insurance, 10 percent of the net proceeds of the loan is credited to the lenders' insurance reserve. The cumulative credits to the insurance reserve for each lender thus equals 10 percent of the net amount advanced by it on all eligible loans and affords insurance against losses on its overall lending operation.

CLAIMS FOR REIMBURSEMENT FOR LOSS

§ 200.177 Claims for payment.

Claim for reimbursement for loss on an eligible Property Improvement loan may be made to the Federal Housing Administrator by the lender after the borrower's default, provided demand has been made for the full unpaid balance of the note. The claim must be made within a prescribed period and be accompanied by the lender's complete credit and collection file for the transaction. The note and any security held or judgment taken must be duly assigned to the United States. An examination and audit of each claim is made to determine compliance with the provisions of the National Housing Act and the regulations.

§ 200.178 Amount of claim.

(a) After it has been determined that the loan and the lender's claim for loss are eligible, the lender is reimbursed by a United States Treasury check for 90 percent of the loss sustained on the defaulted obligation. In addition, the lender may be reimbursed as provided by the regulations for a certain proportion of attorney's fees and uncollected court costs arising out of efforts to collect the note.

(b) If the claim is disapproved the lender is notified of the basis of such disapproval, with return to it of the insurance premium and all related papers and documents. Appeal for reconsideration of disapproval may be had by addressing a written request to Headquarters Office in Washington, D. C.

§ 200.179 Establishment of account.

The moneys derived from premium charges and all moneys collected as fees of any kind in connection with insurance of financial institutions, and all moneys derived from the sale, collection, disposition, or compromise of any debt, contract, claim, property or security assigned or held by the Commissioner are deposited in an account in the Treasury of the United States, which account is available for defraying the operating expenses of the Federal Housing Administration in connection with insurance of financial institutions and any amounts in such account which are not needed for such purpose are available for the payment of claims in connection with the insurance granted under the statute.

Subpart G—Official Records

§ 200.185 Availability of official records.

Except to the extent that there is involved any function of the United States requiring secrecy in the public interest or any matter relating solely to the internal management of the Federal Housing Administration, matters of official record of the Federal Housing Administration, not held confidential for good cause, shall be available for the inspection of persons properly and directly concerned upon application by such persons to the insuring office having jurisdiction or to the Headquarters Office in Washington, D. C.

§ 200.186 Confidential official records.

Records which pertain to contracts of insurance between the lending institution and the Federal Housing Administration are confidential as to all persons other than the contracting parties. These records are identified as follows:

Title I Loan Report.
Title I Refinancing Report.
Title I Reconcilement Statement.
Title I Transfer of Note Report.
Borrower's Application together with the exhibits attached thereto.
Mortgagee's Application for Insurance, together with the exhibits attached thereto.
Commitment for Insurance.
Statement of FHA Appraisal.
Contract of Insurance.
Compliance Inspection Reports.
Mortgagee's Assurance of Completion.
Note, Bond or other Credit Instrument.
Mortgage or other Security Instrument.
Modification Agreement.
Rental Computation.
Consent to Substitution of Mortgagors.
Notice of Transfer by Transferor and Transferee.
Report of Prepayment.
Notice of Default.
Application for Debentures and Certificate of Claim.

Subpart H—Enforcement Remedies

REFUSAL OF PARTICIPATION

§ 200.190 Authority of Director.

Any official designated by the Commissioner as the Director of a Field Office is authorized to refuse the benefits of participation (either directly as a borrower, or indirectly as a builder, contractor, dealer, salesman, or sales agent for a builder, contractor or dealer) under Title I, II, VI, VII, VIII or IX of the National Housing Act, as amended, to any person or firm (including but not limited to any individual, partnership, association, trust, or corporation) if the Director has determined that such person or firm:

(a) Has knowingly or willfully violated any provision of the Act or any regulation issued thereunder, or any provision of Title III of the Servicemen's Readjustment Act of 1944, as amended, or of any regulation issued by the Administrator of Veterans' Affairs thereunder, or

(b) Has, in connection with any construction, alteration, repair or improvement work financed with assistance under the Act or Title III of the Servicemen's Readjustment Act of 1944, as amended, or in connection with contracts or financing relating to such work, violated any Federal or State penal statute, or

(c) Has failed materially to properly carry out contractual obligations with respect to the completion of construction, alteration, repair, or improvement work financed with assistance under the act or Title III of the Servicemen's Readjustment Act of 1944, as amended.

§ 200.191 Notice.

Before any determination is made to refuse any person or firm the benefits of participation, notice of the proposed determination in writing and signed by the Director shall be mailed to the last known address of the interested person or firm by registered mail, return receipt requested.

§ 200.192 Hearing, request.

Any person or firm that has been notified of a proposed determination is entitled to request an opportunity to be heard and to be represented by counsel. Any such request shall be made in writing addressed to the Director of the Office from which it was received. The letter to the Director may also include a request for written notice specifying charges in reasonable detail. The request for an opportunity to be heard shall be made within ten days from the date of receipt of notice of the proposed determination. If at the end of such ten-day period, no request has been received, the Director may assume that an opportunity to be heard is not desired, and may proceed in the manner provided in § 200.194 to notify the interested person or firm of his determination.

§ 200.193 Hearing, time and place.

Upon receipt of a request for an opportunity to be heard, the Director shall arrange a timely hearing. Notice of the time and place of such hearing shall be in writing, transmitted by registered mail, return receipt requested, and shall include a statement indicating the informal nature of the proceedings and their purpose.

§ 200.194 Determination.

After the person or firm against whom action is proposed has been afforded an opportunity to be heard, the Director shall make his determination on the preponderance of the evidence. The Director shall obtain the approval of the Commissioner before making a final determination withdrawing the approval of an approved mortgagee or terminating a lender's insurance contract under Title I of the Act. Notice of such determination shall be made in writing, signed by the Director, and transmitted by registered mail, return receipt requested. The Director's determination shall be final and conclusive.

§ 200.195 Rescission and reinstatement.

Any person or firm debarred from the benefits of participation may in writing request reinstatement. The procedures for reinstatement are substantially similar to those invoked in the initial proceedings. In reaching his determination regarding reinstatement the Director must be satisfied that the original wrongful act has been righted and also be persuaded from the assurances of the party concerned that he understands the requirements of the statutes and the administrative rules and regulations and

that he will comply with them in the future. When a debarment has been

termination procedure is within the dis-

§ 200.208 Rescinding actions.

of the Act and the Title I regulations.

that he will comply with them in the future. When a debarment has been rescinded a report thereof is forwarded to Headquarters Office in Washington, D. C., and the party reinstated receives a notice of such reinstatement.

UNSATISFACTORY RISK DETERMINATION

§ 200.200 Basis of action.

Any Field Office Director may reject an application for mortgage insurance on the grounds of unsound credit or unsatisfactory past experience. Applications will be rejected where past experience with the proposed borrower, builder or other participant in the mortgage transaction indicates that his previous conduct or method of doing business has been such that his participation in the transaction would make it unacceptable from the underwriting standpoint of an insurer. The Unsatisfactory Risk Determination action is usually temporary in nature and may be followed in aggravated cases by the application of section 512 procedures as set forth in § 200.190 et seq.

§ 200.201 Invitation to conference.

The purpose of the application of Unsatisfactory Risk Determination procedure is to obtain a correction of the conditions giving rise to the administrative action. Accordingly, a person against whom administrative action is being considered is usually extended an invitation to discuss the matter with the Director looking toward corrective action on the part of those involved. Such an invitation is not extended if action is taken during investigation or pending court proceedings.

§ 200.202 Determination notice.

When it is determined that a person is an unsatisfactory risk, the Director will notify such person by sending a registered letter to his last known address, stating the date on which such Unsatisfactory Risk Determination is effective, a brief informal statement of the reasons for the same, and the name of the individual firm, its officers and principal stockholders.

§ 200.203 Reinstatement.

Reinstatement of persons and firms whose applications or requests have been rejected under Unsatisfactory Risk Determination procedure is within the discretion of the Director. The Director may entertain any proposal whereby the persons or firms affected make arrangements which will correct the conditions leading to the original determination. The arrangements for corrective action include proper assurances of future compliance in specified matters and agreement to abide by all applicable FHA regulations. Satisfactory corrective action having been taken the Unsatisfactory Risk Determination is rescinded and withdrawn and the persons and firms are reinstated.

TITLE I PRECAUTIONARY MEASURES

§ 200.205 Basis of action.

In order to protect homeowners and to avoid increased insurance risks the Field Office Director will assist lending institutions in their efforts to supervise and control the activities of dealers and salesmen originating Property Improvement loans where there are involved irregularities or disregard for the statute and Title I regulations. The Director will determine the corrective action appropriate in the circumstances.

§ 200.206 Inquiry notice and explanation.

Upon receipt of information indicating unscrupulous and unethical practices on the part of a dealer or salesman, the Director will arrange for a prompt inquiry by a member of his staff. After the inquiry the dealer or salesman is informally advised in writing of the proposed determination by the Director. The dealer or salesman may then request an opportunity to give his version of the surrounding circumstances and answer or explain any derogatory charges or allegations made in connection with his Property Improvement loan operations.

§ 200.207 Determination.

When it has been determined that precautionary measures are to be instituted against a dealer or salesman the Director submits a recommendation to that effect to the Headquarters Office in Washington, D.C., for consideration. If the recommendation is approved the dealer, salesman, insured institution, lending institution and insuring offices will be so advised.

§ 200.208 Rescinding actions.

The Director may rescind precautionary measures actions if he has satisfied himself that the dealer or salesman can and will conduct his future operations in accordance with the letter and spirit of the Act and the Title I regulations. The Director will forward his recommendation regarding any rescission to Headquarters Office in Washington, D.C., which will mail the rescission letter to all who received the original precautionary letter.

SUBCHAPTER B—PROPERTY IMPROVEMENT LOANS

PART 201—CLASS 1 AND CLASS 2 PROPERTY IMPROVEMENT LOANS

Sec.

201.1 Definitions.
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201.14 Administrative reports and examination.
201.15 Amendments.
201.16 Effective date.

AUTHORITY: §§ 201.1 to 201.16 issued under sec. 2, 48 Stat. 1246, as amended; 12 U. S. C. 1703.

§ 201.1 Definitions.

As used in the regulations in this part, the term:

(a) "Act" means the National Housing Act, as amended.

(b) "Administration" means the Federal Housing Administration.

(c) "Commissioner" means the Federal Housing Commissioner or his duly authorized representative.

(d) "Contract of Insurance" includes all of the provisions of the regulations in this part and of the applicable provisions of the Act.

(e) "Insured" means a financial institution holding a Contract of Insurance under Title I of the act.

(f) "Loan" means an advance of funds or credit or the purchase of an obligation evidenced by a note.

(f–1) "Direct loan" means a loan applied for by and disbursed directly to the borrower or borrowers where:

(1) The credit application, signed by the borrower or borrowers, is filled out by:

(i) The borrower or borrowers; or

(ii) A maker of the note other than a borrower; or

(iii) A person acting at the direction of a borrower who has no financial interest, directly or indirectly, in the contract for the repair, alteration or improvement of the borrower's property; and

(2) The proceeds are delivered directly to such borrower or borrowers without the intervention or participation of an intermediary in any manner in such disbursement other than a maker of the note.

(f–2) "Dealer loan" means a loan where an intermediary, having a financial interest in the contract for the repair, alteration, or improvement of the borrower's property, intervenes or participates in the application for or disbursement of the loan.

(g) "Note" includes a note, bond, mortgage, or other evidence of indebtedness.

(h) "Payment" includes a deposit to an account or fund which represents the full or partial repayment of a loan.

(i) "Borrower" means one who applies for and receives a loan in reliance upon the provisions of the Act and whose interest in the property to be improved is:

(1) A fee title, or

(2) A life estate, or

(3) A fee title or life estate subject to a mortgage, deed of trust, or other lien securing a debt, or

(4) A mutually binding contract for the purchase of the property where the borrower is rightfully in possession and the purchase price is payable in installments, or

(5) A lease having a fixed term, expiring not less than six calendar months after the maturity of the loan.

The borrower or borrowers shall have at least one-third of one of such interests in the property to be improved.

(j) "Class 1 (a) loan" means a loan, other than a loan defined in paragraph (k) of this section as a "Class 1 (b) loan," which is for the purpose of financing the repair, alteration, or improvement of an existing structure or of the real property in connection therewith, exclusive of the building of new structures.

(k) "Class 1 (b) loan" means a loan which is made for the purpose of financing the alteration, repair, improvement, or conversion of an existing structure used or to be used as an apartment house or a dwelling for two or more families.

(l) "Class 2 (a) loan" means a loan which is for the purpose of financing the construction of a new structure which is to be used exclusively for other than residential or agricultural purposes: *Provided*, That nothing in this paragraph shall prevent the temporary use of such a structure for residential purposes while the borrower constructs a new dwelling to replace a previous dwelling, which he occupied as an owner or a tenant, which was destroyed or damaged to such an extent that reconstruction is required as a result of a flood, fire, earthquake, storm or other catastrophe which the President, pursuant to section 2 (a) of Public Law 875, approved September 30, 1950, has determined to be a major disaster and the Credit Application is filed within one year from the date of such determination.

(m) "Class 2 (b) loan" means a loan which is for the purpose of financing the construction of a new structure for use in whole or in part for agricultural purposes, exclusive of residential purposes.

(n) "Class 1 loan" includes both "Class 1 (a)" and "Class 1 (b)" loans as defined in paragraphs (j) and (k) of this section.

(o) "Class 2 loan" includes both "Class 2 (a)" and "Class 2 (b)" loans as defined in paragraphs (l) and (m) of this section.

(p) "Existing structure" means a residential structure completed and occupied at least 90 days prior to the application for the Title I loan or a structure for other than residential purposes which was a completed building with a distinctive functional use prior to the application for the Title I loan: *Provided*, That the requirement with respect to the period of occupancy and completion of a new residential structure shall not apply to loans having a principal amount, exclusive of financing charges, of $600 or less or where such residential structures have been damaged in a disaster which the President, pursuant to section 2 (a) of Public Law 875, approved September 30, 1950, has determined to be a major disaster.

§ 201.2 Eligible notes.

(a) *Validity.* The note shall bear the genuine signature of the borrower as maker, shall be valid and enforceable against the borrower or borrowers as defined in § 201.1(i), and shall be complete and regular on its face. The signatures of all parties to the note must be genuine. If the note is executed for and on behalf of a corporation or in a representative capacity, the note must create a binding obligation of the principal.

(b) *Acceleration clause.* The note shall contain a provision for acceleration of maturity, either automatic or at the option of the holder, in the event of default in the payment of any installment upon the due date thereof.

(c) *Payments.* The note shall be payable in equal installments, falling due monthly or every two weeks unless a different payment schedule is approved by the Commissioner. The first installment or the final installment may be more or less than the other installments provided that it is not less than one-half or more than one and one-half times the amount of a regular installment. A note may not provide for a first payment more than two calendar months from the date of the note. However, if 51 percent or more of the income of the borrower is derived directly from the sale of agricultural crops, commodities, or livestock produced by him, a note may be made payable in installments corresponding to income periods shown on the Credit Application. In such cases, the first payment must be made within 12 months of the date of the note and at least one payment shall be made in each 12 months thereafter, provided that no two payments shall be more than 12 months apart, and the proportion of total principal to be paid in later years shall not exceed the proportion of total principal payable in earlier years.

(d) *Maturity*—(1) *Minimum.* The note shall not have a final maturity of less than 6 calendar months from the date of the note.

(2) *Maximum.* The maximum permissible maturity of a note evidencing:

(i) A Class 1 (a) or a Class 2 (a) loan having a principal amount, exclusive of financing charges, of $600 or less is 3 years and 32 days from the date of the note; and a Class 1 (a) or a Class 2 (a) loan having a principal amount, exclusive of financing charges, of more than $600 is 5 years and 32 days from the date of the note.

(ii) A Class 1 (b) loan is 7 years and 32 days from the date of the note.

(iii) A Class 2 (b) loan is 7 years and 32 days from the date of the note, except that if a Class 2 (b) loan is secured by a first mortgage, first deed of trust, or other security instrument constituting a first lien upon the improved property, the loan may have a final maturity not in

excess of 15 years and 32 days from the date of the note.

excess of 15 years and 32 days from the date of the note.

(iv) A combination of any of the above classes of loans shall be no greater than the maximum maturity governing that component part of the loan having the shortest maturity if made alone.

(e) *Late charges.* The note may provide for a late charge, not to exceed 5 cents for each $1.00 of each installment more than 10 days in arrears. No late charge on a past due installment may be accrued in excess of $5.00. In lieu of late charges, notes may provide for interest on past due installments at a rate not in excess of the contract rate in the jurisdiction in which the note is drawn. The borrower must be billed for the penalties collected as such, and evidence of such billing must be in the file if claim is made under the Contract of Insurance.

§ 201.3 Maximum amount of loans.

(a) *Class 1 (a) loan.* A Class 1 (a) loan shall not involve a principal amount, exclusive of financing charges, in excess of $3,500.

(b) *Class 1 (b) loan.* A Class 1 (b) loan shall not involve a principal amount, exclusive of financing charges, in excess of $2,500 per dwelling unit in the improved structure and shall not exceed $15,000.

(c) *Class 2 loan.* A Class 2 loan shall not involve a principal amount, exclusive of financing charges, in excess of $3,500.

(d) *Outstanding aggregate loan balance.* No loan shall be made which will result in an outstanding aggregate loan balance with respect to the same property or structure exceeding the dollar amount limitation prescribed in this section for the type of loan involved. If more than one type or class of loan is involved, the total outstanding aggregate loan balance as to one structure or property shall not exceed the dollar amount limitation prescribed in this section for the type or class of loan having the larger permissible maximum amount.

§ 201.4 Financing charges.

(a) *Maximum charge.* The maximum permissible financing charges, exclusive of fees and charges as provided by paragraph (b) of this section which may be paid or collected for interest, discount, and fees of all kinds in connection with the transaction, shall be computed as follows:

(1) Class 1 and Class 2 loans, having a principal amount, exclusive of financing charges, not in excess of $2,500 and having a maturity not in excess of 7 years and 32 days, may have a financing charge not in excess of an amount equivalent to $5.00 discount per $100 original face amount of a 1-year note, to be paid in equal monthly installments, calculated from the date of the note.

(2) Class 1 and Class 2 loans, having a principal amount, exclusive of financing charges, in excess of $2,500 and a maturity not in excess of 7 years and 32 days, may have a financing charge equivalent to the total of (i) an amount, with respect to so much of the net loan proceeds as does not exceed $2,500, equivalent to $5.00 discount per $100 original face amount of a 1-year note payable in equal monthly installments, plus (ii) an amount, with respect to any portion of the net loan proceeds in excess of $2,500, equivalent to $4.00 discount per $100 original face amount of a 1-year note to be paid in equal monthly installments, calculated from the date of the note.

(3) Class 2 (b) loans, having a maturity in excess of 7 years and 32 days, shall not have a financing charge in excess of an amount equivalent to $3.50 discount per $100 original face amount of a one year note, to be paid in equal monthly installments, calculated from the date of the note.

(4) Such charges correctly based on tables of calculations issued by the Federal Housing Commissioner are deemed to comply with this section. An increase in the ratio of the charge to the average amount outstanding on the debt over the maximum provided in this section, which increase results from the first payment falling due less than 30 days after the date of the note, shall not be deemed to be in conflict with this section.

(b) *Permissible additional charges.* If the insured takes security in the nature of a real estate mortgage, deed of trust, conditional sales contract, chattel mortgage, mechanic's lien, or other security device for the purpose of securing the payment of eligible loans, the insured may collect from the borrower, in addition to the maximum permissible financing charge as provided in paragraph (a) of this section, the following expenses actually incurred by the insured in connection with the transaction: Recording or filing fees, documentary stamp taxes, title examination charges and hazard insurance premiums, provided that such costs or expenses are not paid from the proceeds of the loan or included in the face amount of the note. Such costs or expenses shall not be included by the insured as a portion of a claim under the Contract of Insurance and if such costs or expenses are assessed against the borrower, proper evidence thereof shall be in the file.

(c) *Dealer reserve accounts and guarantees.* Reserve accounts to assure against losses on loans reported to the Commissioner for insurance are prohibited. A dealer or other person may be required to endorse or guarantee payment of notes so long as no reserve account is involved, but any such guarantee must cover the full amount due on the note. The provisions of this paragraph shall not be interpreted to apply to agreements between insureds as to the transfer of loans already reported for insurance.

(d) *Repayment rebate.* If a note is paid in full prior to maturity, the insured shall make a rebate at a rate not less than 6 percent per annum of the amounts so paid in advance of their due dates, if the maximum permissible financing charge in connection with the transaction is in an amount equivalent to $5.00 discount as provided in paragraph (a) of this section. If a lesser charge has been taken, the rebate shall be at not less than a proportional rate.

§ 201.5 Credits and collections.

(a) *Credit application.* Prior to making a loan the insured shall obtain a dated Credit Application executed by the borrower on a form approved by the Commissioner. A separate Credit Application is required for each loan made or note purchased.

(b) *Credit investigation.* The Credit Application, supplemented by such other information as the insured deems necessary, must, in the judgment of the insured, clearly show the borrower to be solvent, with reasonable ability to pay the obligation and in other respects a reasonable credit risk. If, after the loan is made, an insured who acted in good faith discovers any material misstatements or misuse of the proceeds of the loan by the borrower, dealer, or others, the eligibility of the note for insurance will not be affected. However, the insured shall promptly report such discovery to the Commissioner.

(c) *Outstanding FHA and direct Federal obligations.* The proceeds of a loan shall not be disbursed if the insured has knowledge that the borrower is past due more than 15 days as to either principal or interest with respect to an obligation owing to, or insured by, any department or agency of the Federal Government, provided that nothing contained herein shall prevent the making of a loan otherwise eligible, even though the borrower is in default under such an obligation by reason of his military service and the approval of the Commissioner is obtained.

(d) *Past due Title I notes at time of purchase.* A note shall not be purchased when any installment thereon is past due more than 15 days at the date of purchase except purchases of notes under the provisions of § 201.12.

(e) *Prior approval by Commissioner.* Any loan which increases the principal amount outstanding as to all Class 1 or Class 2 loans to any individual borrower to an amount in excess of $5,000, exclusive of financing charges, will be accepted for insurance only upon prior approval of the Commissioner.

(f) *Security.* The taking of security to secure the payment of a loan is left to the discretion of the insured unless specifically required by the Commissioner in accordance with the provisions of paragraph (e) of this section or of § 201.2 (d) (2) (iii). An insured may permit the substitution or subordination of security provided it can be shown when claim is made that at the time of such action the original security value was not impaired or reduced as a result of such action. Upon presentation of the facts the prior approval of the Commissioner may be obtained by the insured to any proposed substitution or subordination of security.

(g) *Collections.* The insured is required to service loans in accordance with acceptable practices of prudent lending institutions. In the event of default, the insured should have adequate facilities for contacting the borrower and otherwise exercise diligence in collecting the amount due. The insured is responsible to the Commissioner for proper collection efforts even though actual collection may be performed by an agent.

(h) *When owner must sign note.* When a borrower is a lessee of property to be improved, which is used or to be used for other than residential or agricultural purposes, the owner of the property shall join in the execution of the note unless the prior credit approval of the Commissioner is obtained.

§ 201.6 Eligible loans.

(a) *Property location.* The property to be improved shall be located within the United States, its territories, or possessions.

(b) *Use of proceeds—in general.* The proceeds of a loan shall be used only to finance alterations, repairs, and improvements upon real property or in connection with existing structures which substantially protect or improve the basic livability or utility of the property, and which are commenced in reliance upon the credit facilities afforded by Title I of the Act.

(c) *Use of proceeds—technical services and direct costs* The proceeds of a loan may be used to pay the cost of architectural and engineering services and fees paid for obtaining building permits that are directly connected with the eligible alterations, repairs, or improvements financed in accordance with the regulations in this part.

(d) *Use of proceeds—"built-in" kitchens.* Any part of the proceeds of a loan may be used for appliances to be installed in a kitchen provided that:

(1) The appliances are designed by the manufacturer to be installed in a kitchen as a "built-in" unit, and

(2) The appliances will be in fact installed and permanently affixed in the kitchen so as to become a permanent part of the real estate, and

(3) The dwelling in which the kitchen is located is designed as a single family residence which is occupied by the borrower, and

(4) The principal amount exceeds $600, exclusive of financing charges, at least $600 of which is to be used for the alteration, repair or improvement of the kitchen, and

(5) Individuals whose interest in the property to be improved is derived under a lease shall not be considered eligible borrowers unless the lease has an original term of not less than 99 years which is renewable, and

(6) Prior to disbursing the proceeds the insured obtains on forms approved by the Commissioner:

(i) A special certification signed by the borrower stating that he owns and occupies a dwelling designed for use as a single family residence and that it is his intention to build in, install and affix permanently in the kitchen of such residence the appliances purchased with the loan so that they will become an integral part of the real estate; and

(ii) An additional certification signed by the dealer, where the provisions of § 201.8(a) are applicable, stating that the appliances purchased by the borrower which are being financed by the Title I loan were designed by the manufacturer to be built in and that they have been permanently built in, installed and affixed in the borrower's kitchen so as to become an integral part of the real estate.

(7) Nothing in this paragraph will be construed as limiting the financing of household appliances or equipment considered eligible prior to October 20, 1959.

(e) *Reliance on credit application.* An insured acting in good faith may, in the absence of information to the contrary, rely upon all statements of facts made by the borrower, which are called for by the borrower's credit application, in determining the eligibility of the loan.

§ 201.7 Ineligible loans.

(a) *In general.* There is hereby established a "list of ineligible items" which includes items, products, alterations, repairs, or improvements, or classes thereof, which the Commissioner has determined not to be eligible for financing with the proceeds of loans reported for insurance under the regulations in this part. The omission of any item from the "list of ineligible items" shall not be construed as rendering such omitted item eligible for financing. All items otherwise ineligible for Title I financing shall remain ineligible for such financing notwithstanding any provision of this section. If an insured has any doubt as to the eligibility of any item, product, alteration, repair, or improvement, or class thereof, it should request a specific ruling from the Commissioner before making any loan.

(b) *List of ineligible items.* No part of the proceeds of a loan shall be used to finance any of the following items:

Barbecue pits.
Bathhouses.
Burglar alarms.
Burglar protection bars.
Dumbwaiters.
Fire alarms or fire detecting devices.
Fire extinguishers.
Flower boxes.
Greenhouses (except commercial greenhouses).
Hangars (airplane).
Kennels.
Kitchen appliances which are designed and manufactured to be freestanding and are not built in and permanently affixed as an integral part of the kitchen in a residential structure.
Outdoor fireplaces or hearths.
Patios (unless permanently attached and affixed to an existing structure and covered by a roof).
Penthouses.
Photo murals.
Radiator covers or enclosures.
Stands.
Steam cleaning of exterior surfaces.
Swimming pools.
Television antennae.
Tennis courts.
Tree surgery.
Valance or cornice boards.

(c) *Supplementing an uninsured obligation.* The proceeds of an insured loan shall not be used to supplement an uninsured obligation of the borrower, created in connection with the proposed alterations, repairs, or improvements, if the payment of the uninsured obligation is secured by a lien unless the insured loan is to be secured by a lien which has priority.

§ 201.8 Dealer investigation, approval and control.

(a) *Procedure before disbursement.* Before disbursing the proceeds of a loan, the insured shall:

(1) *Dealer investigation and approval.* Have approved as "dealer" any applicant who, after such investigation as the insured considers necessary, is found to be reliable, financially responsible and qualified to perform satisfactorily the work to be financed and to extend proper services to the customer. This approval shall be evidenced by an application, on a form approved by the Commissioner, dated and signed by the person requesting approval as dealer and dated and signed by the insured to signify such approval. The dealer application, the approval by the insured, together with supporting information and a record of the insured's experience with the loans originated by such dealer, shall be maintained in the insured's file.

(2) *Completion certificates.* Obtain a completion certificate on a form approved by the Commissioner, signed by the borrower and by the person approved by the insured as dealer. An insured shall not disburse the proceeds of a loan, if, as an inducement for the consummation of the transaction, the borrower has been given or promised a cash payment or rebate or it has been represented to the borrower that he will receive a cash bonus or commissions on future sales. In the absence of information to the contrary, the insured may rely upon the dealer's statement in his completion certificate as to such bonus selling. If there are two or more eligible borrowers involved in a transaction, only one signature is required on the borrower's certificate.

(3) *Authorization to pay loan proceeds.* Obtain written authorization from the borrower, if the insured is the payee of the note and the proceeds are to be disbursed to one other than the borrower.

(4) *Description of improvements.* Obtain a copy of the contract or sales agreement, signed by the borrower and the dealer, describing the type and extent of improvements to be made and the material to be used. Such contract or sales agreement shall be of a type regularly used by the dealer in his business. The signature appearing on the copy of the contract or sales agreement may be a carbon imprint of the signatures appearing on the original.

(5) *Advance notice to applicant.* Mail to the borrower or personally deliver to the borrower written notice, on a form approved by the Commissioner, of the insured's intention to disburse the proceeds of the loan. Such notice shall be directed to the borrower prior to the disbursement of the loan and in no event less than six calendar days prior to such disbursement. A record of such notice showing the date of mailing or delivery to the borrower shall be in the loan file.

(b) *Precautionary measures.* If the insured has not approved the dealer, as provided in paragraph (a) (1) of this section or has reason to withdraw such approval, the proceeds of a loan shall not be disbursed until:

(1) The insured has verified all statements contained on the borrower's credit application.

(2) The borrower has signed the borrower's completion certificate in the presence of the insured.

(3) The insured has inspected the work performed in every instance when the amount involved is $500 or more, and in at least one out of every three transactions when the amounts involved are less than $500.

(4) The insured has signed a statement to the effect that the above requirements were complied with prior to releasing the proceeds of any such loans. Such statement must accompany each loan report.

(c) *Exceptions.* The provisions of paragraphs (a) and (b) of this section shall not apply to direct loans.

(d) *Ineligible persons.* No loan shall be made where the insured has knowledge that any person participating in the transaction as dealer, salesman, broker, borrower, or in any other capacity has been barred from participation in the Title I program pursuant to § 200.190 et seq. of this chapter.

§ 201.9 Refinancing.

(a) *General requirements.* New obligations to liquidate loans previously reported for insurance pursuant to Title I of the act and made on and after October 1, 1954, which may or may not include an additional amount advanced will be covered by insurance, if they meet the requirements of all applicable regulations in this part and the special provisions of this section. Loans made prior to October 1, 1954, may be refinanced under the regulations in effect at the time such loans were made but no additional advance shall be made and such refinancing shall not involve a consolidation with a loan or loans made after October 1, 1954.

(b) *Maximum maturity.* (1) A Class 1 (a) loan or a Class 2 (a) loan which had an original principal amount, exclusive of financing charges, of $600 or less, may be refinanced for an additional period not in excess of 3 years and 32 days from the date of the refinancing, but not to exceed 5 years from the date of the original note. A Class 1 (a) loan or a Class 2 (a) loan which had an original principal amount, exclusive of financing charges, of more than $600 may be refinanced for an additional period not in excess of 5 years and 32 days from the date of the refinancing, but not to exceed 7 years from the date of the original note.

(2) A Class 1 (b) loan may be refinanced for an additional period not in excess of 7 years and 32 days from the date of the refinancing, but not to exceed 10 years from the date of the original note.

(3) A Class 2 (b) loan may be refinanced for an additional period not in excess of 7 years and 32 days from the date of the refinancing, but not to exceed 10 years from the date of the original note, except that if a Class 2 (b) loan is secured by a first mortgage, first deed of trust, or other security instrument, constituting a first lien upon the improved property, the new note may have a final maturity not in excess of 15 years and 32 days from the date of the refinancing, but not to exceed 25 years from the date of the original note.

(4) When a Class 1 loan or a Class 2 loan is made or refinanced and consolidated with another Class 1 loan or Class 2 loan, the new note evidencing the consolidated obligation shall not be for a longer term than that which the component loan having the shortest permissible maturity could have if made or refinanced alone: *Provided,* That consolidated Class 1 (a) or Class 2 (a) loans may be refinanced for an additional period of 5 years and 32 days, but not to exceed 7 years from the date of the earliest component loan, if the consolidated obligation, exclusive of financing charges, exceeds $600 or if any of the component loans had an original principal amount, exclusive of financing charges, of more than $600.

(c) *Rebate.* The full unearned charge on the original note shall be refunded to the borrower. If no additional advance is made a handling charge not in excess of $5.00 may be assessed the borrower: *Provided,* That the provisions of this paragraph shall be applicable to loans refinanced on or after December 31, 1959.

(d) *Special cases.* The Commissioner may upon presentation of the facts approve the refinancing or refinancing and consolidation of any loan or loans upon such terms and conditions as he may determine within the limits provided by the act.

(e) *Deferred payments.* An agreement to defer payments on a note previously reported for insurance under the regulations in this part without rewriting the note is not considered refinancing. Such agreement will not affect the insurance coverage on the loan provided that:

(1) Such agreement is evidenced in writing;

(2) Payments shall not be deferred for more than 5 months from the due date of the last fully paid installment;

(3) Such agreement shall not extend the final maturity of the obligation beyond the maturity date of the obligation as provided by its original terms;

(4) The insured may assess the borrower for the cost of such deferment if such charge is not in excess of an equivalent amount of late charges as provided in § 201.2 (e).

§ 201.10 Report of loans.

Loans shall be reported on the prescribed form to the Federal Housing Administration at Washington, D.C., within 31 days from the date of the note or date upon which it was purchased. Any loan refinanced as provided in § 201.9 shall likewise be reported on the prescribed form within 31 days from date of refinancing. Any loan transferred as provided in § 201.12(e) shall be reported on the prescribed form within 31 days from the date of such transfer. In any case, the Commissioner may, in his discretion, accept a late report.

§ 201.11 Claims.

(a) *Claim application.* Claim for reimbursement for loss on an eligible loan shall be made on a form provided by the Commissioner, and executed by a duly qualified officer of the insured. The claim shall be accompanied by the insured's complete credit and collection file pertaining to the transaction.

(b) *Claim after default.* Claim may be made after default provided demand has been made upon the debtor for the full unpaid balance of the note.

(c) *Maximum claim period.* For the purpose of determining when a claim must be filed under the provisions of this section, any payments received on an account, including payments on a judgment predicated thereon, shall be applied to the earliest unpaid installment, and in the case of:

(1) Yearly installment notes, whenever an installment is 12 months in default, claim must be made within 31 days thereafter;

(2) All other installment notes, whenever an installment is 9 months in default, claim shall be made within 31 days thereafter, and interest is to be allowed as provided in paragraph (e) of this section up to the full period of 9 months and 31 days.

(3) Military service cases, if at any time during default a person primarily or secondarily liable for the repayment of any loan is a "person in military service," as such term is defined in the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, the period during which he is in military service shall be excluded in computing the time within which claim must be made for reimbursement under the provisions of this section.

(d) *Extension of maximum claim period.* Upon presentation to the Commissioner of the facts of a particular case within the allowable claim period prescribed in this section, he may, in his discretion, extend the time within which claim must be made, provided that in computing the claim no interest will be allowed for the period of such extension.

(e) *Claim amount.* An insured will be reimbursed for its loss on loans made in accordance with the regulations in this part up to the amount of its reserve as established by § 201.12 as follows:

(1) 90 percent of the net unpaid amount of the loan actually made or the actual purchase price of the note, whichever is the lesser;

(2) 90 percent of the uncollected earned interest to date of default and 90 percent of interest from the date of default to the date of the application for reimbursement of loss sustained figured at 5 percent per annum on the outstanding principal balance, but in no event shall the total interest allowed exceed the maximum permissible financing charge on the principal amount outstanding to the date of application for reimbursement: *Provided,* That the provisions of this subparagraph shall be applicable to claims paid on or after December 31, 1959.

(3) Uncollected court costs, including fees paid for issuing, serving, and filing summons;

(4) Attorney's fees actually paid not exceeding:

(i) 25 percent of the amount collected by the attorney on the defaulted note provided the insured does not waive its

claim against the borrower for such fees;

(ii) $25.00 or 15 percent of the balance due on the note, whichever is the lesser, if a judgment is secured by suit, or $10.00 or 15 percent of the balance due on the note, whichever is the lesser, if a judgment is secured by confession after default; and

(iii) $50.00 plus 5 percent of the balance due on the note as an additional fee where the action is contested and judgment is obtained.

(f) *Assignment of documents.* The note and any security held or judgment taken must be assigned in its entirety and if any claim has been filed in bankruptcy, insolvency, or probate proceedings, such claim shall likewise be assigned to the United States of America.

(g) *Form of assignment.* The following form of assignment properly dated shall be used in assigning a note, judgment, real estate mortgage, deed of trust, conditional sales contract, chattel mortgage, mechanic's lien, or any other security device in event of claim:

All right, title, and interest of the undersigned is hereby assigned (without warranty, except that the note qualifies for insurance) to the United States of America.

(Financial Institution)
By ---
Title ---
Date ---

Provided, That if this form is not valid or generally acceptable in the jurisdiction involved, a form which is valid and generally acceptable shall be used.

(h) *Election of action.* Where a real estate mortgage, deed of trust, conditional sales contract, chattel mortgage, mechanics' lien, judgment lien, or any other security device has been used to secure the payment of a loan made under the provisions of Title I of the act, the insured may not, except with the approval of the Commissioner, both proceed against such security and also make claim under its contract of insurance, but shall elect which method it desires to pursue.

§ 201.12 Insurance reserve.

(a) *Legal limit.* Subject to the limitation on the Commissioner's authority to insure as stipulated in section 2 of Title I of the act, the Commissioner, pursuant to the provisions of § 201.11, will reimburse any insured for losses sustained by it in accordance with the general insurance reserve provisions of paragraph (b) of this section.

(b) *General insurance reserve.* There shall be maintained for each insured a general insurance reserve, which shall equal ten percent of the aggregate amount advanced on all eligible loans originated by such insured pursuant to the provisions of the regulations in this part on and after March 1, 1950, and prior to the expiration of the Commissioner's authority to insure under the provisions of the act, less the amount of all claims approved for payment by the Commissioner in connection with such loans and less the amount of the adjustment or adjustments, if any, made pursuant to paragraph (c) of this section.

(c) *Adjustment of general reserve.* After August 1, 1956, the amount of the general insurance reserve to the credit of each insured shall be adjusted on July 1 of each year by deducting therefrom an amount equivalent to 15 percent of the amount of such insurance reserve on the records of the Commissioner as of the date of such adjustment: *Provided,* That no such adjustment shall reduce the insurance reserve of any insured to an amount less than $5,000: *Provided further,* That no such adjustment shall be made in the insurance reserve of any financial institution until the first day of July next following the expiration of a period of 30 months after the issuance of a contract of insurance to such institution by the Commissioner, and no such adjustment shall be made in the insurance reserve of any financial institution after the termination of the contract of insurance issued to such institution by the Commissioner, or after the termination of the Commissioner's authority to insure against losses pursuant to Title I of the National Housing Act.

(d) *Transfer of loans reported for insurance.* The insured shall not assign or otherwise transfer any loan reported for insurance to a transferee not holding a contract of insurance under Title I of the National Housing Act: *Provided,* That nothing contained herein shall be construed to prevent the pledging of such loans as collateral security under a trust agreement, or otherwise, in connection with a bona fide loan transaction.

(e) *Transfer of insurance reserve.* Insurance reserve of more than $5,000 shall not be transferred to or from the reserve account of any insured during any fiscal year (July 1 through June 30) without the prior approval of the Commissioner. Except in cases involving the transfer of loans sold with recourse or under a guaranty, guarantee or repurchase agreement, the reports required by § 201.10 shall be submitted, indicating the intent of the parties with respect to the transfer of the insurance reserve; and, unless the approval of the Commissioner is obtained, the insurance reserve shall be transferred as follows:

(1) In cases involving the transfer of notes purchased without recourse, guaranty, guarantee, or repurchase agreement, provided no installment payment is past due more than one calendar month at the time of purchase, reserve shall be transferred to the reserve of the purchasing institution, on the basis of 10 percent of the actual purchase price or net unpaid original advance, whichever is the lesser.

(2) In cases involving the transfer of notes purchased without recourse, guaranty, guafantee, or repurchase agreement, where one or more installment payments are past due more than one calendar month at the time of purchase, the loans and reserves shall be transferred on an earmarked basis. In the case of earmarked transfers all reserves accrued by reason of the loans transferred shall be transferred, but such reserves shall be available only for payment of claims on the loans transferred, and claims on such loans can be paid only up to the amount of such earmarked reserves.

(3) In cases involving the transfer of notes sold with recourse or under a guaranty, guarantee, or repurchase agreement, no insurance reserve will be transferred and no reports will be required.

(f) *FHA recovery shall not affect reserve.* Amounts which may be salvaged by the Commissioner with respect to a loan in connection with which an insured has been reimbursed under its contract of insurance shall not be added to the insurance reserve remaining to the credit of such insured.

§ 201.13 Insurance charge.

(a) *Rate.* The insured shall pay to the Commissioner on loans made or refinanced on or after April 1, 1958, an insurance charge equal to fifty one-hundredths (0.50) of one percent per annum of the net proceeds of any eligible loan reported and acknowledged for insurance: *Provided,* That in the case of a Class 1(b) loan in excess of $3,500, exclusive of financing charges, and in the case of a Class 2(b) loan having a maturity in excess of 7 years and 32 days, such insurance charge shall be forty-five one-hundredths (0.45) of one percent per annum. In computing the insurance charge, no charge shall be made for the fractional period of a month of 14 days or less, and a charge for a full month shall be made for the fractional period of a month of more than 14 days.

(b) *When payable.* Such insurance charge for the entire term of the loan shall be paid within 25 days after the date the Commissioner acknowledges receipt to the insured institution of the report of loan: *Provided,* That on loans having a maturity in excess of 3 years and 32 days, such charge may be paid in installments, the first of which shall be equal to the charge for 3 years and be paid within said 25 days, and the second and succeeding installments, each equal to the charge for one year, shall be paid on the first and each succeeding anniversary of the first day of the month following the date of the note.

(c) *Notes transferred.* Any adjustments of the insurance charge already paid on any obligation transferred between insureds shall be made by the insureds, except that any unpaid installments of the insurance charge shall be paid by the purchasing insured.

(d) *Refund or abatement.* There shall be no refund or abatement of any portion or installment of the insurance charge except:

(1) The charge on a refinanced note may be credited with the unearned portion of the charge on the original note;

(2) Insurance charges falling due after claim is filed or the note is prepaid in full;

(3) The charge paid on a loan or portion thereof found to be ineligible; but no refund shall be made unless a claim is denied by the Commissioner or the ineligibility is reported by the insured promptly upon discovery and an application for refund made. *In no event shall charges be refunded where the application for refund is not made until after the loan is paid in full.*

(e) *When not chargeable to borrower.* The insurance charge paid by the in-

§ 201.15 Amendments.

PART 203—CLASS 2 PRO

(e) *When not chargeable to borrower.* The insurance charge paid by the insured shall not be charged to the borrower if such charge would cause the total payments made by the borrower to exceed the maximum permissible amount which may be charged to the borrower for interest, discount, and all other charges in connection with the transaction.

§ 201.14 Administrative reports and examination.

The Commissioner, or his authorized representative, may at any time call upon an insured for such reports as he may deem to be necessary in connection with the regulations in this part, or may inspect the books or accounts of the insured as they pertain to the loans reported for insurance.

§ 201.15 Amendments.

The regulations in this part may be amended by the Commissioner at any time, but such amendment shall not adversely affect the insurance privileges of an insured with respect to any loan previously made. Unless otherwise provided, no amendment shall apply to any loan or the refinancing of any such loan when the original loan was made before the effective date of such amendment.

§ 201.16 Effective date.

The regulations in this part are effective as to all loans made on and after October 1, 1954, except that § 201.11(c)(2) and § 201.11(e)(4) shall be effective as to all claims paid on and after October 1, 1954, and § 201.12(c) shall be effective as to all adjustments made after October 1, 1954.

PART 202—CLASS 3 PROPERTY IMPROVEMENT LOANS

Sec.

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AUTHORITY: §§ 202.1 to 202.13 issued under sec. 2, 48 Stat. 1246, as amended; 12 U. S. C. 1703.

§ 202.1 Definitions.

As used in the regulations in this part:

(a) "Act" means the National Housing Act, as amended.

(b) "Administration" means the Federal Housing Administration.

(c) "Commissioner" means the Federal Housing Commissioner or his duly authorized representative.

(d) "Contract of insurance" includes all of the provisions of the regulations in this part and of the applicable provisions of the act.

(e) "Insured" means any financial institution holding a Contract of Insurance under Title I of the act.

(f) "Loan" and "Class 3 loan" mean any loan made under the regulations in this part for the purpose of financing the construction of a new structure to be used in whole or in part for residential purposes.

(g) "Borrower" means one who is an eligible owner or lessee of real property upon which a new structure is to be or has been constructed pursuant to the provisions of the act and the regulations in this part and who applies for and receives an advance of credit in reliance upon the provisions of the act and the regulations in this part.

(h) "Installment payment" includes that deposit to an account or fund which represents the partial repayment of a loan.

(i) "Mortgage" includes a note, bond, deed of trust, or other evidence of indebtedness or security instrument taken in connection with a Class 3 loan.

(j) "Class 3 structure" means a structure, the construction of which is financed with the proceeds of an eligible Class 3 loan.

(k) "Discount loan" means a loan made on a discount, gross charge, or non-interest-bearing basis.

(l) "Interest-bearing loan" means a loan represented by a note payable in monthly installments bearing simple interest on the principal outstanding from time to time.

§ 202.3 Eligible borrowers.

A borrower, in order to be eligible for a Class 3 loan:

(a) *Eligible owners or lessees.* Shall be (1) the fee simple owner of unencumbered land upon which the new structure is to be built or (2) the lessee of such unencumbered land under a lease from the United States Government for a term of at least 6 months beyond the maturity of the loan or (3) the lessee of such unencumbered land under a lease for 99 years which is renewable or under a lease which has 50 years to run from the date the mortgage is executed. If the borrower is a lessee the provisions of the lease shall be submitted to and approved by the Commissioner. Any lease other than a lease from the United States Government must provide for an annual rental not in excess of 5 percent of the valuation placed upon the unimproved land by the insured and shall contain a provision which will entitle the lessee to obtain a fee simple title to such land upon payment at any time after 1 month's written notice of a sum not in excess of the appraised valuation placed upon such land at the time the loan is made. If the parties so desire the lease may provide for the deferment of such right to obtain the fee simple title for a period not to exceed 5 years from the date of the mortgage; but in any event the lease must contain a provision giving the Federal Housing Commissioner the option to purchase the fee simple title upon 60 days' written notice to the lessor in the event the Commissioner acquires the interest of the lessee pur-

suant to the provisions of the regulations in this part.

(b) *Borrowers equity.* Shall establish to the satisfaction of the insured by certification on the credit application provided or in § 202.5 that after the mortgage, deed of trust, or similar instrument has been recorded, the property will be free and clear of all liens other than such mortgage, deed of trust, or similar instrument, except taxes and ground rents not due and payable and special assessments not in arrears, and that in addition to the loan he has an investment in the property in cash, in land, or an interest in the land in an amount equal to 5 percent of the appraised value of the completed property as determined under § 202.8 (b).

§ 202.4 Eligible improvements.

(a) *Purpose.* A loan must be for the purpose of financing the construction of a Class 3 structure and appurtenances thereto located within the United States, its territories and possessions, and which is commenced on or after August 19, 1947, in reliance upon the credit facilities afforded by Title I of the National Housing Act, as amended, and which conforms to the following requirements relating to the land and improvements thereon:

(1) The development and use of land shall not violate any zoning or deed restrictions applicable to the project site and must comply with all applicable building regulations.

(2) The land shall comprise a single plot of not less than 4,000 square feet.

(3) Vehicular access to the property shall be provided by a public street or way or private means protected by a permanent easement.

(4) Grading or drainage shall divert water away from buildings and off the site.

(5) The structure shall be limited in design to single-family occupancy.

(6) The structure shall have a living room which may contain space for cooking and dining, and at least one separate room designed for sleeping purposes. The total floor area shall not be less than 360 square feet.

(7) All rooms, including bathrooms, if any, shall be provided with one or more windows to permit adequate natural light and ventilation.

(8) Where winter house heating by means other than electricity is the established custom, a safe means of disposing of the products of combustion to the outside air shall be provided.

(9) Each single-family unit shall be provided with an on-site supply of safe and palatable water. Where public or community water service is available to the subject property, it shall be connected with the structure and with the fixtures required in subparagraph (12) of this paragraph.

(10) Each single-family unit shall be provided with a sanitary means of sewage disposal. Where public or community sewerage is available to the property, connection shall be made thereto and to the fixtures required in subparagraph (12) of this paragraph.

(11) Where individual water supply and sewerage systems are used, the installations shall conform with local sanitary regulations for such individual systems. Where on-site well or cistern supply equipped with a pump and an on-site sanitary pit privy are used, when this conforms with the established custom of the neighborhood, the installation shall comply with the recommendations of the local department of health or in the absence of such recommendations with the United States Public Health Service publications "Rural Water Supply Sanitation" or "Individual Sewage Disposal Systems." Evidence of compliance shall be secured from the health authority having jurisdiction and the insured may rely upon such evidence as establishing compliance with this subparagraph.

(12) Where connection with a public or community water and sewage disposal system is made as required in subparagraphs (9) and (10) of this paragraph, a kitchen sink and bathroom with bathtub or shower, water closet and lavatory shall be provided. This requirement also applies when an individual water-carriage sewage disposal system is installed on the property. When disposal is by sanitary pit privy, the water closet and lavatory may be omitted and the other fixtures shall be connected with a dry well. When water is provided by a well or cistern supply and a privy is used, all bathroom fixtures may be omitted.

(13) Where electricity is available, connection shall be made thereto.

(14) In the case of a loan which is for the purpose of financing the building of a Class 3 structure for sale or for rent, the borrower shall certify to the insured that the footings, foundations, columns, and structural elements of load bearing sections of the structure, including exterior walls, interior partitions, floors, ceilings, roofs and, when included, heating, plumbing and electrical installations comply with the Federal Housing Administration minimum construction requirements contained in the "Minimum Property Requirements for Properties of One or Two Living Units" for the area in which the property is located.

(15) The above conditions may be varied under special circumstances and in certain areas upon prior approval of the Commissioner.

(b) *Unfinished structures.* The proceeds of a loan shall not be used to finance the cost of completing an unfinished structure, unless the unfinished structure was begun under a Class 3 loan, in which case the total of all such loans shall not exceed $4,500.

(c) *Architectural services.* The proceeds of a loan may be used to pay for architectural and engineering services and builders' profit in connection with the building of new structures financed in accordance with the regulations in this part.

(d) *Refinancing existing obligations prohibited.* The proceeds of a loan shall not be used for the purpose of refinancing existing obligations not previously made or reported for insurance pursuant to the regulations in this part.

§ 202.5 Credits.

(a) *Credit application.* Prior to making a loan the insured shall obtain a dated credit application executed by the borrower on a form approved by the Commissioner. A separate credit application is required for each loan made or mortgage purchased.

(b) *Credit investigation.* The credit application, supplemented by such other information as the insured deems necessary, must, in the judgment of the insured, clearly show the borrower to be solvent, with reasonable ability to pay the obligation and in other respects a reasonable credit risk. If, after the loan is made, an insured who acted in good faith discovers any material misstatements or misuse of the proceeds of the loan by the borrower, dealers, or others, the eligibility of the mortgage for insurance will not be affected. However, the insured shall promptly report such discovery to the Commissioner.

(c) *Reliance on credit application.* An insured acting in good faith may, in the absence of information to the contrary, rely upon all statements of fact made by the borrower which are called for by the borrower's credit application.

(d) *Outstanding FHA and direct Federal obligations.* The proceeds of a loan shall not be disbursed if the insured has knowledge that the borrower is past due more than 15 days as to either principal or interest with respect to an obligation owing to, or insured by, any department or agency of the Federal Government: *Provided,* That nothing contained herein shall prevent the making of a loan otherwise eligible, even though the borrower is in default under such an obligation by reason of his military service and the approval of the Commissioner is obtained.

(e) *Past due Title I mortgages at time of purchase.* A mortgage shall not be purchased when any installment thereon is past due more than 15 days at the date of purchase except purchases of mortgages under the provisions of § 202.12.

(f) *Collections.* The insured is required to service loans in accordance with acceptable practices of prudent lending institutions. In the event of default, the insured should have adequate facilities for contacting the borrower and otherwise exercise diligence in collecting the amount due. The insured is responsible to the Commissioner for proper collection efforts even though actual collection may be performed by an agent.

§ 202.6 Eligible interest bearing loans.

(a) *Mortgage provisions.* In order to be eligible for insurance a loan shall be secured by collateral security in the form of a duly recorded first mortgage, first deed of trust, or similar instrument which constitutes a first lien upon a fee simple or leasehold interest in the land and buildings, appurtenances, and improvements thereon and which:

(1) Is in a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage, deed of trust, or similar instrument is situated and involves a principal amount not in excess of $4,500.

(2) Shall provide for interest at such

(11) Ground rents, taxes, special as-

rower, at such time, may also be required

financing charge as provided in this sub-

(2) Shall provide for interest at such rate as may be agreed upon between the borrower and the insured but in no case shall such interest be in excess of 4½ percent per annum on the outstanding principal. Interest and principal shall be payable in monthly installments (or other periodic installments as provided in subparagraph (11) of this paragraph. In the event interest is payable in installments corresponding to the income periods shown on the credit application, such interest payments may be required in advance for each installment period.)

(3) May provide for payments by the borrower to the insured on each installment payment date of an amount equal to the annual insurance charge payable by the insured to the Commissioner, divided by the number of installment payment dates to elapse prior to the date such charge is due and payable to the Commissioner.

(4) Shall provide for such equal payments by the borrower to the insured on each installment payment date as will amortize the ground rents, if any, and the estimated amount of all taxes, special assessments, if any, and fire and other hazard insurance premiums, within a period ending 1 month prior to the date on which same became delinquent. Such payments shall be held by the insured in a manner satisfactory to the Commissioner for the purpose of paying such ground rents, taxes, assessments, and insurance premiums before the same become delinquent for the benefit and account of the borrower. The mortgage shall also make provision for adjustments in case the estimated amount of such taxes, assessments, and insurance premiums should prove to be more or less than the actual amount thereof so paid by the insured.

(5) Shall contain a privilege of prepayment in full or in amounts equal to one or more installment payments on the principal that are next due on the mortgage at any interest payment date upon 30 days' prior notice and without premium or penalty.

(6) Shall provide that all installment payments to be made by the borrower to the insured shall be added together and the aggregate amount thereof shall be applied to the following items in the order set forth:

(i) Insurance charges due the Federal Housing Commissioner.

(ii) Ground rents, taxes, special assessments, and fire and other hazard insurance premiums.

(iii) Interest on the loan.

(iv) Amortization of the principal of the loan.

(7) May provide for a late charge to be paid by the borrower, not to exceed 2 cents for each dollar for each installment payment more than 15 days in arrears. No late charge may be accrued in excess of $5.00. The borrower must be billed for the penalties collected as such, and evidence of such billings must be in the file if claim is made under the contract of insurance.

(8) Shall contain a provision for acceleration of maturity at the option of the holder in the event of default.

(9) Shall not have a final maturity in excess of 20 years and 5 calendar months.

(10) Shall provide for not more than 240 monthly payments which shall fall due on the first day of a month and unless the approval of the Commissioner is obtained, the first such payment shall fall due not less than 6 days nor more than 6 calendar months from the date of the mortgage, except as provided in subparagraph (11) of this paragraph.

(11) In instances in which the credit application of the borrower indicates that not less than 51 percent of the income of the borrower is derived directly from the sale of agricultural crops, commodities or livestock produced by him, the mortgage may provide, in lieu of monthly installments, for substantially equal installment payments corresponding to the income periods shown on the credit application: *Provided, however,* That the first payment must be within 12 months of the date of the mortgage and that at least one payment must be made during each calendar year thereafter.

(b) *Borrowers' payments.* The borrower must pay to the insured, upon the execution of the mortgage, a sum that will be sufficient to pay premiums on fire and other insurance required by the insured pursuant to the terms of the mortgage, and ground rents, if any estimated taxes, special assessments, drainage, and irrigation charges applicable to the period beginning on the date to which such ground rents, taxes, assessments, and charges were last paid and ending on the date of the first periodic payment under the mortgage. The borrower, at such time, may also be required to pay a sum equal to the first annual insurance charge plus an amount equal to one-twelfth of the annual insurance charge multiplied by the number of months to elapse from the date of the closing of the loan to the date of the first periodic payment, and if the mortgage provides for payment of interest in advance, interest to the due date of the first periodic payment thereunder. The insured may charge the borrower any fees paid to the Administration and an initial service charge in an amount sufficient to reimburse the insured for the cost of closing the transaction, including appraisal and construction inspection fees but in no case shall the amount of such service charge be in excess of 2 percent of the original principal amount of the loan.

(c) *Recording fees and title costs.* In addition to the charges hereinbefore mentioned the insured may collect from the borrower only recording fees and such costs of title search as are customary in the community.

§ 202.7 Eligible discount loans.

(a) A "discount" loan shall be secured by collateral security in the form of a duly recorded first mortgage, first deed of trust or other similar instrument, which is approved as to form by the Commissioner and which constitutes a first lien upon a fee simple or leasehold interest in the land and buildings, appurtenances, and improvements thereon and:

(1) Shall not be in excess of $4,500 exclusive of financing charges to the borrower.

(2) Shall not have a maturity in excess of 20 years and 5 calendar months.

(3) May provide for a maximum financing charge to be paid by the borrower for interest, discount, and fees of all kinds, other than those referred to in subparagraph (4) of this paragraph and paragraphs (b) and (c) of this section, in connection with the transaction not in excess of an amount based on tables of calculations issued by the Federal Housing Commissioner, and intended to provide a financing charge equivalent to that permitted by the regulations in this part as to interest-bearing loans. The acceptance of a voluntary payment of one or more installments prior to due date shall not be construed as increasing the maximum permissible financing charge as provided in this subparagraph. However, if the entire loan is paid in advance, the insured shall make a rebate of the entire unearned financing charge.

(4) Shall provide for such equal monthly payments by the borower to the insured institution as will amortize the ground rents, if any, and the estimated amount of all taxes, special assessments, if any, and fire and other hazard insurance premiums within a period ending 1 month prior to the date on which same become delinquent. In such event the note shall further provide that such payments shall be held by the insured institution in a manner satisfactory to the Commissioner for the purpose of paying such ground rents, taxes, assessments, and insurance premiums before the same become delinquent for the benefit and account of the borrower and shall also make provision for adjustments in case the estimated amount of such taxes, assessments, and insurance premiums shall prove to be more or less than the actual amount thereof so paid by the borrower. If the income of the borrower is derived from the sale of agricultural corps, commodities, or livestock, payments may be seasonal as provided in subparagraph (7) of this paragraph.

(5) May provide for a late charge, to be paid by the maker, not to exceed two cents for each dollar of each installment more than 15 days in arrears. In lieu of late charges, notes may provide for interest on past due installments at a rate not in excess of the contract rate in the jurisdiction in which the note is drawn. No late charge or interest on a past due installment may be accrued in excess of $5.00. The borrower must be billed for the penalties collected as such, and evidence of such billing must be in the file if claim is made under the contract of insurance.

(6) May not provide without the approval of the Commissioner for a first payment less than 6 days nor more than 6 calendar months from the date of the note except as provided in subparagraph (7) of this paragraph and in no case shall provide for more than 240 payments.

(7) May be made payable in installments corresponding to the income periods shown on the credit application if 51 percent or more of the income of the

borrower is derived directly from the sale of agricultural crops, commodities, or livestock produced by him. In such cases, the first payment must be made within 12 months of the date of the note and at least one (1) payment must be made during each calendar year thereafter and the proportion of total principal to be paid in later years must not exceed the proportion of total principal payment in earlier years.

(8) Shall contain a provision for acceleration of maturity, either automatic or at the option of the holder, in the event of default in the payment of any installment.

(b) In addition to the maximum permissible financing charge which may be paid by the borrower in connection with a Class 3 loan as provided in paragraph (a) (3) of this section, the following allowable costs or expenses if incurred by the insured institution in connection with the transaction may be collected from the borrower, provided such costs or expenses are not paid from the net proceeds advanced to the borrower:

(1) Recording fees.

(2) Title examination fees.

(3) Fire and other hazard insurance premiums.

(4) An initial service charge in an amount sufficient to reimburse the insured institution for the cost of closing the transaction: *Provided,* That, no such service charge shall exceed 2 percent of the net proceeds of the loan.

(c) The borrower may be required to pay the insured institution upon the closing of the loan a sum that will be sufficient to pay the ground rents, if any, and the estimated taxes, special assessments, and fire and other hazard insurance premiums for the period beginning on the date to which such ground rent, taxes, assessments, and insurance premiums were last paid and ending on the date of the first monthly payment under the loan to be held by the insured institution for the purpose of paying such ground rents, taxes, assessments, and insurance premiums before the same become delinquent for the benefit and account of the borrower.

§ 202.8 Loan procedure.

(a) *Property approval.* Prior to beginning construction and to the disbursement of any portion of the proceeds of the loan, the borrower shall submit to the insured a description of the property and such plans and specifications as the insured may require in order for the insured to certify to the Commissioner that in its opinion the site is suitable for a home and the proposed structure when completed will not adversely affect surrounding properties. Such property description, plans and specifications shall remain a permanent part of the loan file.

(b) *Appraisal.* Prior to beginning construction and to the disbursement of any portion of the proceeds of the loan the insured shall make an estimate of the value of the property, assuming completion of the proposed improvements, and determine that the requirements of § 202.3 (b) will be complied with.

(c) *Commissioner's approval on properties for sale or rent.* Prior to beginning construction and to the disbursement of any portion of the proceeds of the loan for any property which is intended for sale or rent, the insured shall submit to the Commissioner a request for preliminary approval of the transaction on a form prescribed by the Commissioner. The approval of the Commissioner provided for in this section shall not relieve the insured from compliance with any regulation.

(d) *Progress payments.* Prior to disbursing the proceeds of the loan or any portion thereof to the borrower or to a creditor for his account, the insured shall satisfy itself that the value of the work done and materials on site at the time of any progress payment, is equal to at least 110 percent of such payment, plus all such progress payments theretofore made. The insured shall not make a disbursement or progress payment to the borrower or to a creditor for his account which would increase the total amount disbursed to a sum in excess of 80 percent of the proceeds of the loan until it has made a final inspection of the property and has approved the work. Whenever it appears to the satisfaction of the insured that completion of the work will be temporarily delayed due to inclement weather, nonavailability of material, or other reason beyond the control of the builder, it may disburse the entire balance remaining of the loan proceeds after deducting and retaining therefrom one and one-half times the amount deemed necessary to complete the work. This retained balance shall not be disbursed until after the work has been inspected and approved by the insured. Notwithstanding any other provision of this section, part or all of the proceeds of the loan may, at any time after the execution of the mortgage instruments by the borrower, be placed in escrow or in a special account for the benefit of the borrower: *Provided,* That disbursements therefrom shall be made only at the time and under the conditions as otherwise prescribed in this section.

(e) *Completion certificate.* Prior to the final disbursement of the proceeds of the loan, the insured shall obtain a completion certificate on a form prescribed by the Commissioner which form shall bear the genuine signature of the borrower certifying that the house is complete and ready for occupancy and that the work has been performed in compliance with the requirements of § 202.4. If, after the loan is made, an insured who acted in good faith discovers any material misstatements or misuse of the proceeds of the loan by the borrower, dealer, or others, the eligibility of the note for insurance will not be affected. However, the insured shall, in all cases where the insured discovered a material misstatement in the Credit Application, or misuse of the funds, promptly report such a discovery to the Commissioner. A separate certificate shall be executed by the insured certifying that it has made a final inspection of the completed property and that the statements contained in the borrower's completion certificate are correct to the best of its knowledge and belief and that in its opinion the property improved is suitable as a residence and does not adversely affect surrounding properties.

(f) *Substitution of borrowers.* In the event that property covered by a loan is sold to an eligible borrower who assumes and agrees to pay the debt and whose credit is satisfactory to the insured, the seller may be released by the insured from his obligation upon notice thereof to the Commissioner: *Provided,* That, if the loan was secured by a first lien upon a fee simple estate, the loan, after assumption, shall be secured by a first lien on a fee simple interest in the land and building, appurtenances and improvements thereon.

(g) *Loan reports.* Loan shall be reported on the proper form to the Federal Housing Administration at Washington, D. C., within 31 days of the first disbursement of any of the proceeds of the loan or the date upon which it was purchased. Any loan refinanced in accordance with § 202.9 shall be reported on the proper form within 31 days from the date of refinancing. In any case, the Commissioner may in his discretion accept a late report.

§ 202.9 Refinancing.

New obligations to liquidate loans previously reported for insurance pursuant to Title I of the act made after after August 19, 1947, which may or may not include an additional amount advanced will be covered by insurance: *Provided,* That:

(a) They meet the requirements of all applicable regulations;

(b) They are reported to the Commissioner on the proper form within 31 days from date of execution;

(c) They have a maturity not in excess of the maximum permitted under the regulations in this part from the date of the refinancing obligation, but not to exceed 30 years from the date of the original mortgage;

(d) If the refinanced obligation was secured by a first lien upon a fee simple estate, the new obligation shall be secured by a first lien upon a fee simple interest in the land and building, appurtenances and improvements thereon.

§ 202.10 Claims.

Claim for reimbursement for loss on a qualified loan shall be made as provided in this section.

(a) *Default reports.* If the borrower fails to make any payment or to perform any other covenant or obligation under the mortgage and such failure continues for a period of 30 days, the mortgage shall be considered in default and the insured shall within 60 days thereafter give notice in writing to the Commissioner of such default, and similar notices each 60 days until such default is cured and notice thereof is given to the Commissioner.

(b) *Foreclosure or acquisition.* At any time within 1 year from the date of default the insured, at its election, shall either:

(1) Acquire by means other than foreclosure of the mortgage, possession of, and title to, the mortgaged property; or

the loan, the borrower shall submit to the work. This retained balance shall

(2) Commence foreclosure of the mortgage: *Provided,* That if the laws of the State in which the mortgaged property is situated do not permit the commencement of such foreclosure within such period of time, the insured shall commence such foreclosure within 60 days after the expiration of the time during which such foreclosure is prohibited by such laws.

(3) Nothing contained in this section shall be construed so as to prevent the insured, with the written consent of the Commissioner, from taking action at a later date than specified in this section.

(c) *Reinstatement.* If after default and prior to the completion of foreclosure proceedings the borrower shall pay to the insured all monthly payments in default and such expenses as the insured shall have incurred in connection with the foreclosure proceedings, no claim for reimbursement under the Contract of Insurance can be made and the insurance shall continue as if such default had not occurred.

(d) *Filing claim.* If the default is not cured as aforesaid, and if the insured has otherwise complied with the provisions of this section, it may at any time within 7 months or such further time as may be approved by the Commissioner, after acquiring title to and possession of the mortgaged property, tender to the Commissioner possession thereof, and a deed containing a covenant which warrants against the acts of the insured and all claiming by, through, or under it, conveying good merchantable title to such property undamaged by fire, earthquake, flood, or tornado. The Commissioner shall promptly accept conveyance of such property and, subject to § 202.12, make payment of loss sustained by the insured as follows:

(1) The net unpaid balance of advance actually made;

(2) Uncollected earned interest to the date of default and interest at the rate of 3 percent per annum from the date of default to the date of the application for reimbursement of loss sustained.

(3) An amount on account of the cost of foreclosure or of acquiring the property by other means actually paid by the insured and approved by the Commissioner not in excess of two-thirds of such cost or seventy-five dollars, whichever is the greater.

(4) The amount of all payments which have been made by the insured for taxes, ground rents, special assessments, and water rates which are liens prior to the mortgage, and fire and hazard insurance premiums.

Any amount received by the insured from any source relating to the property on account of rent or other income, after deducting reasonable expenses incurred in handling the property, shall be deducted from the sum of the foregoing.

(e) *Evidence of title.* Evidence of title of the following types will be satisfactory to the Commissioner:

(1) A fee or owner's policy of title insurance, a guaranty or guarantee of title, or a certificate of title, issued by a title company, duly authorized by law and qualified by experience to issue such; or

(2) An abstract of title prepared by an abstract company or individual engaged in the business of preparing abstracts of title and accompanied by a legal opinion as to the quality of such title signed by an attorney at law experienced in examination of titles; or

(3) A Torrens or similar title certificate; or

(4) Evidence of title conforming to the standards of a supervising branch of the Government of the United States or of any State or Territory thereof.

Such evidence of title shall be furnished without cost to the Commissioner and shall be executed as of a date to include the recordation of the deed to the Commissioner, and shall show that, according to the public records, there are not, at such date, any outstanding prior liens, except for ground rents and taxes not due and payable and special assessments not in arrears. If the title and title evidence are such as to be acceptable to prudent lending institutions and leading attorneys generally in the community in which the property is situated, such title and title evidence will be satisfactory to the Commissioner and will be considered by him as good and merchantable.

(f) *Waiver of title objections.* The commissioner will not object to the title by reason of the following matters, provided they are not such as to impair the value of the property for residence purposes:

(1) Customary easements for public utilities, party walls, driveways and other purposes; customary building or use restrictions for breach of which there is no reversion and which have not been violated to a material extent;

(2) Such restrictions when coupled with a reversionary clause, provided there has been no violation prior to the date of the deed to the Commissioner;

(3) Slight encroachments by adjoining improvements;

(4) Outstanding oil, water, or mineral rights, which do not impair the value of the property for residence purposes, or which are customarily waived by prudent lending institutions and leading attorneys generally in the community.

(g) *Sale and claim for deficiency.* In lieu of the procedure provided for in paragraphs (d) and (e) of this section, the insured, after acquiring title to the property as provided in this section, may at its option and with the approval of the Commissioner, sell the same in the open market to a bona fide third party at any time within 6 months from the date of such acquisition of the property, or within such further time as may be approved by the Commissioner. The net amount received at such sale, whether in cash or deferred payments, shall be credited on the obligation and claim may be filed with the Commissioner for the balance. Payment of loss sustained by the insured shall be made as follows:

(1) The net unpaid balance of the advance actually made. In calculating the net unpaid amount, the net sale price must be included as a credit.

(2) Uncollected earned interest to the date of default and interest at the rate of 3 percent per annum from the date of default to the date of the application for reimbursement of loss sustained.

(3) An amount on account of the cost of foreclosure or of acquiring the property by other means actually paid by the insured and approved by the Commissioner not in excess of two-thirds of such cost or seventy-five dollars, whichever is the greater.

(4) The amount of all payments which have been made by the insured for taxes, ground rents, special assessments, water rates which are liens prior to the mortgage, fire and hazard insurance premiums, and cost of maintenance and repair of the property. (Claim for the cost of maintenance and repair shall not exceed 10 percent of the net unpaid balance of the advance actually made unless prior approval of the Commissioner has been obtained.) Any amount received by the insured from any source relating to the property on account of rent or other income shall be deducted from the sum of the items referred to in this paragraph.

§ 202.11 Insurance charge.

(a) *Rate.* The insured shall pay to the Administration an annual insurance charge equal to one-half of 1 percent of the original principal amount of any loans reported for insurance.

(b) *When payable.* The first annual insurance charge so calculated shall be paid by check or draft to the order of the Federal Housing Administration within 25 days after the date the Administration acknowledges receipt to the insured of the report of any such loan and the next and each succeeding annual insurance charge shall be paid in advance upon the anniversary of the first day of the month following the date of the mortgage until the loan is paid in full or claim is filed with the Commissioner under the Contract of Insurance.

(c) *Mortgages paid in full.* In the event the loan is paid in full prior to maturity or is foreclosed or the possession of and title to the property is otherwise acquired by the insured, the insured shall within 30 days thereafter notify the Commissioner of the date of prepayment, foreclosure, or acquisition, after which its obligation to pay future annual insurance charges in connection therewith shall cease but it shall not be entitled to a refund of any portion of an annual insurance charge previously paid or a reduction in the amount of any insurance charge, which fell due prior to such prepayment, foreclosure, or acquisition of the property.

(d) *Refinancing.* When the proceeds of any loan are used to liquidate a loan previously reported for insurance, there shall be deducted from the amount of the insurance charge payable the first year the pro rata share of the annual insurance charge paid on the original obligation.

(e) *Transfer of mortgages.* An insured who purchases a mortgage previously reported for insurance shall pay each succeeding annual insurance charge as provided in paragraph (b) of this section. Any adjustment of the insurance charge paid in advance by the

seller shall be made between the purchaser and the seller.

(f) *Payment of insurance charge.* Subject to the other provisions of the regulations in this part, the insurance granted under Title I of the National Housing Act, as amended, shall be effective with respect to any loan from the date of the report thereof to the Commissioner: *Provided,* That the insurance charge with respect to such loan is paid as required by this section.

§ 202.12 Insurance reserve.

(a) *Legal limit.* Subject to the limitation on the total liability which may be outstanding at any time as stipulated in section 2 of Title I of the act, the Commissioner, in accordance with § 202.10 (d) and (g), will reimburse any insured for losses sustained by it up to a total aggregate amount equal to 10 percent of the total amount advanced on all eligible loans made by it on and after July 1, 1947, and prior to March 1, 1950, and reported for insurance during the time its contract of insurance is in force.

(b) *General insurance reserve.* There shall be established for each insured a general insurance reserve equal to 10 percent of the aggregate amount advanced on all loans originated by it on and after July 1, 1947, and prior to March 1, 1950, pursuant to the provisions of both this part and Part 201 of this chapter.

(c) *Transfer of loans reported for insurance.* The insured shall not assign or otherwise transfer any loan reported for insurance to a transferee not holding a Contract of Insurance under Title I of the National Housing Act: *Provided,* That nothing contained in this paragraph shall be construed to prevent the pledging of such loans as collateral security under a trust agreement or otherwise, in connection with a bona fide loan transaction.

(d) *Transfer of insurance reserve.* Insurance reserve of more than $5,000 shall not be transferred to or from the reserve account of any insured during any fiscal year (July 1 through June 30) without the prior approval of the Commissioner. Except in cases involving the transfer of loans sold with recourse or under a guaranty, guarantee, or repurchase agreement, the reports required by § 202.8 shall be submitted, indicating the intent of the parties with respect to the transfer of the insurance reserve and unless the approval of the Commissioner is obtained, the insurance reserve shall be transferred as follows:

(1) In cases involving the transfer of notes purchased without recourse, guaranty, guarantee, or repurchase agreement, provided no instalment payment is past due more than 1 calendar month at the time of purchase, the insurance reserve shall be transferred to the general insurance reserve of the purchasing institution on the basis of 10 percent of the actual purchase price or net unpaid original advance, whichever is the lesser.

(2) In cases involving the transfer of notes sold with recourse or under a guaranty, guarantee, or repurchase agreement, no insurance reserve will be transferred and no reports will be required.

(e) *FHA recovery shall not affect reserve.* Amounts which may be salvaged by the Commissioner with respect to a loan in connection with which an insured has been reimbursed under its contract of insurance shall not be added to the insurance reserve remaining to the credit of such insured.

(f) *Conversion of mortgages.* If at any time a Class 3 loan previously reported for insurance is converted into an insured mortgage under the provisions of another title of the act, upon report of the conversion to the Commissioner, there shall be deducted from the insurance reserve outstanding to the credit of the insured an amount equal to 10 percent of the net unpaid principal of the loan as of the date of the conversion.

§ 202.13 Administrative reports and examination.

The Commissioner, in his discretion, may at any time or from time to time call for a report from any institution on the delinquency status of the obligations held by such institution and reported for insurance, or call for such reports as he may deem to be necessary in connection with the regulations in this part, or he or his authorized representative may inspect the books or accounts of the lending institution as they pertain to the loans reported for insurance.

PART 202a—TITLE I MORTGAGE INSURANCE

Subpart A—Eligibility Requirements [Obsolete]

Subpart B—Contract Rights and Obligations

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202a.267 Amendments to regulations.

EFFECTIVE DATE

202a.300 Effective date.

AUTHORITY: §§ 202a.251 to 202a.300 issued under sec. 2, 48 Stat. 1246, as amended, sec. 8, 64 Stat. 48, as amended; 12 U.S.C. 1703, 1706c.

Subpart A—Eligibility Requirements—[Obsolete]

Subpart B—Contract Rights and Obligations

§ 202a.251 Definitions of terms used in this part.

As used in the regulations in this part:

(a) The term "Commissioner" means the Federal Housing Commissioner.

(b) The term "act" means the National Housing Act, as amended.

(c) The term "mortgage" means such a first lien upon real estate as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the jurisdiction where the real estate is situated, together with the credit instruments, if any, secured thereby.

(d) The term "insured mortgage" means a mortgage which has been insured by the endorsement of the Commissioner.

(e) The term "mortgagor" means the original borrower under a mortgage and his heirs, executors, administrators, and assigns.

(f) The term "mortgagee" means the original lender under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

(g) The term "contract of insurance" means the endorsement of the Commissioner upon the credit instrument given in connection with an insured mortgage, incorporating by reference the regulations in this part.

PREMIUMS

§ 202a.253 Annual mortgage insurance premiums.

(a) The mortgagee shall pay to the Commissioner, either in cash or debentures issued under Title I of the National Housing Act at par plus accrued interest, mortgage insurance premiums in accordance with paragraphs (b) and (c) of this section which shall be calculated in accordance with the amortization provisions of the mortgage, without taking into account delinquent payments or prepayments.

(b) The initial mortgage insurance premium shall be paid on the date on which the insurance becomes effective by endorsement and shall cover the period beginning with the date of insurance endorsement and ending one year after the beginning of amortization. Regardless of whether such period is more or less than one year, a payment shall be made to the Commissioner on account of the initial mortgage insurance premium which payment shall be in an amount equal to ½ percent of the average outstanding principal obligation for the first year of amortization under the mortgage. If such payment is less than the minimum premium or more than the

amount equal to the pro rata portion of

of the mortgagor and which have not been applied in reduction of the princi-

maximum premium prescribed by the act, the initial mortgage insurance premium shall be in the minimum amount prescribed by the act, and the amount of the second premium payment shall be adjusted accordingly; but if such payment is within the limitations prescribed by the act, no adjustment shall be made and the amount of the payment shall be retained by the Commissioner as the initial mortgage insurance premium.

(c) After the payment of the initial mortgage insurance premium and until the mortgage is paid in full, or until an application for debentures is received by the Commissioner, or until the contract of insurance is otherwise terminated, the mortgagee shall continue to pay annual mortgage insurance premiums to the Commissioner. Such annual premium shall be paid on the anniversary date of the beginning of amortization and shall be in an amount equal to ½ percent of the average outstanding principal obligation for the 12-month period following the date on which the premium becomes payable.

(d) For the purpose of this section the term "beginning of amortization" shall mean the date one month prior to the date of the first monthly payment.

§ 202a.254 Prepayment premiums.

(a) In the event that the principal obligation of any mortgage accepted for insurance is paid in full prior to maturity, the mortgagee shall within 30 days thereafter notify the Commissioner of the date of prepayment. In the event the mortgage is paid in full before the due date of the 120th scheduled monthly payment, without taking into account delinquent payments or prepayments, the mortgagee shall pay to the Commissioner an adjusted premium charge of 1 percent of the original principal amount of the prepaid mortgage.

(b) In no event shall the adjusted premium exceed the aggregate amount of premium charges which would have been payable if the mortgage had continued to be insured until the due date of the 120th scheduled monthly payment, without taking into account delinquent payments or prepayments.

(c) No adjusted premium shall be due or payable in the following cases:

(1) Where at the time of such prepayment there is placed on the mortgaged property a new insured mortgage;

(2) Where the final maturity specified in the mortgage is accelerated solely by reason of partial prepayments made by the mortgagor which do not exceed in any one calendar year 15 percent of the original face amount of the mortgage; or by reason of partial prepayments made by the mortgagor in excess of 15 percent made during the period from May 27, 1941 through June 30, 1952;

(3) Where the final maturity specified in the mortgage is accelerated solely by reason of payments to principal to compensate for:

(i) Damage to the mortgaged property;

(ii) The conveyance of the mortgaged property pursuant to condemnation proceedings or in lieu of condemnation proceedings; or

(iii) A release of a part of such property if approved by the Commissioner;

(4) Where payment in full is made pursuant to a court order or of a delinquent mortgage on which foreclosure proceedings have been commenced, or for the purpose of avoiding foreclosure if the transaction is approved by the Commissioner; or

(5) Where payment in full is made within 60 days after the date the mortgage is endorsed for insurance, provided the mortgagee submits to the Commissioner a certificate signed by the mortgagor certifying that such payment was made in connection with the sale of the property to a veteran of World War II for his occupancy as a home.

(6) Where payment in full is made after the due date of the 120th scheduled monthly payment, without taking into account delinquent payments or prepayments.

§ 202a.255 Voluntary termination of insurance.

Any contract of insurance meeting the requirements of this part may be voluntarily terminated in accordance with the provisions of section 229 of the Act. Voluntary terminations of insurance contracts shall be subject to the applicable provisions of Part 203 of this chapter.

§ 202a.256 Pro rata refund in event of prepayment.

Upon such prepayment the contract of insurance shall terminate and the Commissioner will refund to the mortgagee for the account of the mortgagor an amount equal to the pro rata portion of the current annual mortgage insurance premium theretofore paid which is applicable to the portion of the year subsequent to such payment, computed from the first day of the month following the month in which such prepayment occurs: *Provided*, That no such refund will be made in any case where the prepayment occurs in the twelfth month of the premium year.

§ 202a.257 Forbearance of foreclosure.

With respect to any mortgage insured under this part, if the Commissioner finds that a default was due to circumstances beyond the mortgagor's control and determines that the mortgage will be restored to a current condition within a reasonable period of time, the Commissioner may approve forbearance of foreclosure relief as follows:

(a) *Uncollected interest allowance.* The mortgagee may withhold foreclosure proceedings against the mortgagor for a period of time determined by the Commissioner. If payments received from the mortgagor during the period of forbearance are insufficient to pay interest at the mortgage rate after applying such payments in the order set forth in the mortgage and the mortgage is subsequently foreclosed, the debentures may include an allowance for uncollected interest accrued during the period of such forbearance.

(b) *Assignment of defaulted mortgages.* With the prior written approval of the Commissioner, the mortgagee may assign the mortgage in exchange for debentures. As a requirement of such assignment:

(1) The mortgagee shall deliver:

(i) The original credit and security instruments assigned without recourse or warranty, except that no act or omission of the mortgagee shall have impaired the validity and priority of the mortgage;

(ii) All rights and interest arising under the mortgage, and all claims of the mortgagee against the mortgagor or others arising out of the mortgage transaction;

(iii) All title evidence held by the mortgagee, extended to include the assignment of the mortgage to the Commissioner;

(iv) All cash or property held by the mortgagee or to which it is entitled, including deposits made for the account of the mortgagor and which have not been applied in reduction of the principal mortgage indebtedness;

(v) All records, documents, books, papers and accounts relating to the mortgage transaction;

(vi) Any additional information or data which the Commissioner may require.

(2) The mortgagee shall certify that:

(i) The mortgage is prior to all mechanics' and materialmen's liens filed of record subsequent to the recording of such mortgage regardless of whether such liens attach prior to such recording date, and prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to such mortgage except such liens or other matters as may have been approved by the Commissioner;

(ii) The amount stated in the instrument of assignment is actually due and owing under the mortgage;

(iii) There are no offsets or counterclaims thereto and the mortgagee has a good right to assign.

(c) *Condition of property.* The property covered by the mortgage which is to be assigned shall meet all of the provisions of § 202a.63.

INSURANCE ENDORSEMENT

§ 202a.258 Form of endorsement of original credit instrument.

Upon compliance, satisfactory to the Commissioner, with the terms of his commitment to insure, the Commissioner will endorse the original credit instrument in form as follows:

No. ---------
Insured under Section 8 of Title I
of the
National Housing Act
And Regulations of the
Federal Housing Commissioner
For Mortgage Insurance Thereunder
Dated ----------
As Amended ----------
FEDERAL HOUSING COMMISSIONER
By ----------
Authorized agent
Date ----------

§ 202a.259 Contract of insurance.

The mortgage shall be an insured mortgage from the date of such endorsement. The Commissioner and the mortgagee shall thereafter be bound by the regulations in this part with the same force and to the same extent as if a sep-

arate contract had been executed relating to the insured mortgage, including the provisions of the regulations in this part and of the National Housing Act.

RIGHTS AND DUTIES OF APPROVED MORTGAGEE

§ 202a.260 Rights of parties on termination of insurance.

In the event the mortgagee forecloses on the mortgaged property, but does not convey it to the Commissioner in accordance with § 202a.263, and the Commissioner is given written notice thereof, or in the event the mortgagor pays the obligation under the mortgage in full, prior to the maturity thereof, and the mortgagee pays any adjusted premium required under § 202a.254, and the Commissioner is given written notice by the mortgagee of such payment by the mortgagor, the obligation to pay any subsequent premium charge for insurance shall cease and all rights of the mortgagee and mortgagor, under § 202a.263 shall terminate as of the date of such notice.

§ 202a.261 Time of default.

If the mortgagor fails to make any payment, or to perform any other covenant or obligation under the mortgage, and such failure continues for a period of 30 days, the mortgage shall be considered in default, and the mortgagee shall, within 60 days thereafter, give notice in writing to the Commissioner of such default, unless such default has been cured or unless the Commissioner has been notified of a previous default which remains uncured.

§ 202a.262 Transfer of property to the Commissioner; conditions of default in mortgage.

(a) At any time within one year from the date of default the mortgagee, at its election, shall either:

(1) With, and subject to, the consent of the Commissioner, acquire by means other than foreclosure of the mortgage, possession of, and title to, the mortgaged property; or

(2) Commence foreclosure of the mortgage: *Provided,* That if the laws of the State in which the mortgaged property is situated do not permit the commencement of such foreclosure within such period of time, the mortgagee shall commence such foreclosure within 60 days after the expiration of the time during which such foreclosure is prohibited by such laws.

(b) The mortgagee shall promptly give notice in writing to the Commissioner of the situation of foreclosure proceedings and shall exercise reasonable diligence in prosecuting such proceedings to completion.

(c) For the purpose of this section, the date of default shall be considered as 30 days after the first uncorrected failure to perform a covenant or obligation, or the first failure to make a monthly payment which subsequent payments by the mortgagor are insufficient to cover when applied to the overdue monthly payments in the order in which they became due.

(d) If after default and prior to the completion of foreclosure proceedings, the mortgagor shall pay to the mortgagee all monthly payments in default and such expenses as the mortgagee shall have incurred in connection with the foreclosure proceedings, notice shall be given to the Commissioner, and the insurance shall continue as if such default had not occurred.

(e) Nothing contained in this section shall be construed so as to prevent the mortgagee, with the written consent of the Commissioner, from taking action at a later date than herein specified.

(f) If at any time during default the mortgagor is a "person in military service," as such term is defined in the Soldiers' and Sailors' Civil Relief Act of 1940, the period during which he is in such service shall be excluded in computing the one-year period within which the mortgagee shall commence foreclosure or acquire the property by other means as provided in this section and no postponement or delay in the prosecution of foreclosure proceedings during the period the mortgagor is in such military service shall be construed as failure on the part of the mortgagee to exercise reasonable diligence in prosecuting such proceedings to completion as required by this section.

(g) If the mortgagor is a person in military service as defined in such act, the mortgagee may, by written agreement with the mortgagor, postpone for the period of military service, and three months thereafter, that part of the monthly payment, or any part thereof which represents amortization of principal, provided such agreement contains a provision for the resumption of monthly payments thereafter in amounts which will completely amortize the mortgage debt within its original maturity. Such agreement, however, will in no way affect the amount of the annual mortgage insurance premium which will continue to be calculated in accordance with the original amortization provisions.

§ 202a.263 Condition of property when transferred; delivery of debentures, certificate of claim and definition of term "waste".

(a) If the default is not cured as aforesaid, and if the mortgagee has otherwise complied with the provisions of § 202a.262, and at any time within 30 days (or such further time as may be necessary to complete the title examination and perfect such title) after acquiring possession of the mortgaged property by foreclosure, or by other means in accordance with § 202a.262(a), the mortgagee shall either tender to the Commissioner a satisfactory conveyance of title and transfer of possession (free of occupants if the Commissioner so requires) under a deed containing a covenant which warrants against the acts of the mortgagee and all claiming by, through, or under it, or with the prior approval of the Commissioner, tender to the Commissioner a satisfactory conveyance of title and transfer of possession (free of occupants if the Commissioner so requires) under a deed or other satisfactory instrument of conveyance from the mortgagor or other appropriate grantor, such deeds or instrument of conveyance conveying good merchantable title (evidenced as provided in § 202a.264) to such property undamaged by fire, earthquake, flood, or tornado, and undamaged by waste, except as hereinafter in this section provided, and assigns (without recourse or warranty) any and all claims which it has acquired in connection with the mortgage transaction, and as a result of the foreclosure proceedings or other means by which it acquired or tendered such property, except such claims as may have been released with the approval of the Commissioner, the Commissioner shall promptly accept conveyance of such property and such assignment and shall deliver to the mortgagee:

(1) Debentures of the Title I Housing Insurance Fund as set forth in section 8 of Title I of the act, issued as of the date foreclosure proceedings were instituted or the property was otherwise acquired by the mortgagee after default, bearing interest at the rate of 2½ percent per annum in the case of mortgages endorsed for insurance prior to March 23, 1953, and at the rate of 2¾ percent per annum in the case of mortgages endorsed for insurance on or after March 23, 1953, and prior to July 8, 1953, and at the rate of 3 percent per annum in the case of mortgages endorsed for insurance on or after July 8, 1953, and at the rate of 2¾ percent per annum if issued in exchange for property accepted for insurance pursuant to commitments issued by the Commissioner on or after May 29, 1954, payable semiannually on the first day of January and the first day of July of each year, and having a total face value equal to the value of the mortgage as defined in section 204 (a) of the act. Such value shall be determined by adding to original principal of the mortgage, which was unpaid on the date of the institution of foreclosure proceedings or the acquisition of the property otherwise after default, the amount of all payments, which have been made by the mortgagee for taxes, ground rent and water rates, which are liens prior to the mortgage, special assessments, which are noted on the application for insurance or which become liens after the insurance of the mortgage, insurance on the property mortgaged and any mortgage insurance premium paid after the institution of foreclosure proceedings or the acquisition of the property otherwise after default, and by deducting from such total any amount received on account of the mortgage after the institution of foreclosure proceedings or the acquisition of the property otherwise after default and from any source relating to the property on account of rent or other income after deducting reasonable expenses incurred in handling the property. There will also be included in the debentures issued by the Commissioner, on account of foreclosure costs actually paid by the mortgagee and approved by the Commissioner an amount not in excess of two-thirds of such costs or $75, whichever is the greater: *Provided,* That with respect to mortgages to which the provisions of sections 302 and 306 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, apply, there shall be included in the debentures an amount which the Commissioner finds to be sufficient to compensate the mortgagee for waste in accordance with such provision

(4) Evidence of title conforming to obligations of the transferor under the

cient to compensate the mortgagee for any loss which it may have sustained on account of interest on debentures and the payment of insurance premiums by reason of its having postponed the institution of foreclosure proceedings or the acquisition of the property by other means during any part or all of the period of such military service and 3 months thereafter.

(2) Such debentures shall be registered as to principal and interest and all or any such debentures may be redeemed, at the option of the Commissioner with the approval of the Secretary of the Treasury, at par and accrued interest on any interest payment day on 3 months' notice of redemption given in such manner as the Commissioner shall prescribe.

(3) A certificate of claim in accordance with section 204 (e) of the act, which shall become payable, if at all, upon the sale and final liquidation of the interest of the Commissioner in such property in accordance with section 204 (f) of the act. This certificate shall be for an amount which the Commissioner shall determine to be sufficient to pay all amounts due under the mortgage and not covered by the amount of debentures and shall include a reasonable amount for necessary expenses incurred by the mortgagee in connection with the foreclosure proceedings or the acquisition of the mortgaged property otherwise and the conveyance thereof to the Commissioner, including reasonable attorney's fees, unpaid interest and cost of repairs to the property made by the mortgagee after default to remedy the waste mentioned in this section. Each such certificate of claim shall provide that there shall accrue to the holder thereof with respect to the face amount of such certificate, an increment at the rate of 3 percent per annum.

(b) The term "waste" as used in this section means permanent or substantial injury caused by unreasonable use, or abuse, and is not intended to include damage caused by ordinary wear and tear.

(c) The provisions of this section concerning waste shall not apply to mortgages on which the unpaid principal obligation at the time of the institution of foreclosure proceedings exceeds 75 percent of the appraised value of the property as of the date the mortgage was accepted for insurance, and in any event the obligation of the mortgagee to repair waste in accordance with such provision shall be limited to the amount of $100 for each family dwelling unit covered by the mortgage.

(d) In computing the value of the mortgage as set forth in paragraph (a)(1) of this section, the Commissioner may include in such computation the amount of payments made by the mortgagee for:

(1) Taxes imposed upon any deeds or other instruments by which said property was acquired by the mortgagee and transferred or conveyed to the Commissioner;

(2) Reasonable payments made by the mortgagee, with the approval of the Commissioner, for the purpose of protecting, operating, or preserving the property;

(3) The costs of acquiring the property by the mortgagee and conveying and evidencing title of the property to the Commissioner, may be included in the debenture computation as foreclosure costs and shall be subject to the aggregate limitation on foreclosure costs.

(e) Upon an acceptable assignment of a mortgage, the Commissioner shall issue to the mortgagee debentures having a total face value equal to the unpaid balance of the loan at the time of assignment, plus any accrued mortgage interest and any advances made under the mortgage and approved by the Commissioner.

(f) Applications for debentures with respect to mortgages insured under the provisions of this part shall be processed in accordance with the procedures under Part 203 of this chapter.

§ 202a.264 Satisfactory title evidence.

(a) Evidence of title of the following types will be satisfactory to the Commissioner:

(1) A fee or owner's policy of title insurance, a guaranty or guarantee of title, or a certificate of title, issued by a title company, duly authorized by law and qualified by experience to issue such; or

(2) An abstract of title prepared by an abstract company or individual engaged in the business of preparing abstracts of title and accompanied by the legal opinion as to the quality of such title signed by an attorney at law experienced in examination of titles; or

(3) A Torrens or similar title certificate; or

(4) Evidence of title conforming to the standards of a supervising branch of the Government of the United States or of any State or Territory thereof.

(b) Such evidence of title shall be furnished without cost to the Commissioner and shall be executed as of a date to include the recordation of the deed to the Commissioner, and shall show that, according to the public records, there are not, at such date, any outstanding prior liens including any past due and unpaid ground rents, general taxes, or special assessments.

(c) If the title and title evidence are such as to be acceptable to prudent lending institutions and leading attorneys generally in the community in which the property is situated, such title and title evidence will be satisfactory to the Commissioner and will be considered by him as good and merchantable.

(d) The Commissioner will not object to the title by reason of the following matters, provided they are not such as to impair the value of the property for residence purposes, or provided they have been brought to the attention of the insuring office for consideration in fixing the valuation:

(1) Customary easements for public utilities, party walls, driveways, and other purposes; customary building or use restrictions for breach of which there is no reversion and which have not been violated to a material extent;

(2) Such restrictions when coupled with a reversionary clause, provided there has been no violation prior to the date of the deed to the Commissioner;

(3) Slight encroachments by adjoining improvements;

(4) Outstanding oil, water, or mineral rights which, in the opinion of the Commissioner, do not impair the value of the property for residence purposes, or which are customarily waived by prudent lending institutions and leading attorneys generally in the community.

ASSIGNMENTS

§ 202a.265 In general.

(a) When the insured mortgage is transferred to another approved mortgagee, such transferor and transferee shall both notify the Commissioner of such transfer within 30 days thereof, and the transferee shall thereupon succeed to all the rights and become bound by all the obligations of the transferor under the contract of insurance; and the transferor shall thereupon be released from its obligations under the contract of insurance.

(b) Whenever the insured mortgage is transferred to another approved mortgagee for the purposes of collateral only, no notice need be given to the Commissioner until such collateral is foreclosed, but the transferor shall remain subject to all the obligations of the contract of insurance.

§ 202a.266 Termination of contract of insurance by assignment.

The contract of insurance shall terminate upon the happening of either of the following events:

(a) The acquisition of the insured mortgage by, or the pledge thereof to, any person, firm, or corporation, public or private, other than an approved mortgagee, whether individually or in trust for another: *Provided,* That this paragraph shall not be applicable to a mortgage acquired or held by an approved mortgagee, which is a banking institution or trust company inspected and supervised by some governmental agency, or a trust held or administered by it in a fiduciary capacity, as long as such fiduciary relationship shall remain in effect;

(b) The disposal by an approved mortgagee of any partial interest in an insured mortgage or group of insured mortgages (whether to another approved mortgagee or otherwise) by means of a declaration of trust, or by a participation or trust certificate, or by any other device; provided that this paragraph shall not be applicable to any mortgage so long as it is held in a common trust fund maintained by a bank or trust company (1) exclusively for collective investment and reinvestment of moneys contributed thereto by the bank or trust company in its capacity as a trustee, executor or administrator; and (2) in conformity with the rules and regulations prevailing from time to time of the Board of Governors of the Federal Reserve System, pertaining to the collective investment of trust funds: *Provided further,* That this paragraph shall not be applicable to any mortgage so long as it is held in a common trust estate administered by a bank or trust company which is subject to the inspection and supervision of a governmental agency, exclusively for the benefit of other bank-

ing institutions which are subject to the inspection and supervision of a governmental agency, and which are authorized by law to acquire beneficial interests in such common trust estate, nor to any mortgage or group of mortgages transferred to such a bank or trust company as trustee exclusively for the benefit of outstanding owners of undivided interests in the trust estate, under the terms of certificates issued and sold more than three years prior to said transfer, by a corporation which is subject to the inspection and supervision of a governmental agency: *And provided further,* That this paragraph shall not be applicable to any participation in a mortgage by one or more banks or trust companies pursuant to an agreement entered into prior to the insurance of such mortgage under which such institutions participate in the advance of construction funds in contemplation of reimbursement from the proceeds of the sale of the insured mortgage, and such participation may continue for such period of time after the insurance of the mortgage as may be required to execute the purposes of such agreement, provided the mortgagee presenting the mortgage for insurance is entitled to all the rights and is bound by all the obligations of the contract of insurance.

AMENDMENTS

§ 202a.267 Amendment to regulations.

The regulations in this part may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not affect the contract of insurance on any mortgage already insured, or any mortgage or prospective mortgage on which the Commissioner has made a commitment to insure.

EFFECTIVE DATE

§ 202a.300 Effective date.

The regulations in this part are effective as to all mortgages on which a commitment to insure is issued under section 8 of Title I to an approved mortgagee on or after the date of this part.

SUBCHAPTER C—MUTUAL MORTGAGE INSURANCE AND INSURED HOME IMPROVEMENT LOANS

PART 203—MUTUAL MORTGAGE INSURANCE AND INSURED HOME IMPROVEMENT LOANS

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AUTHORITY: §§ 203.1 to 203.499 issued under secs. 203, 211, 52 Stat. 10, as amended, 23, as amended; 12 U.S.C. 1709, 1715b.

Subpart A—Eligibility Requirements

APPROVAL OF MORTGAGEES

§ 203.1 Governmental institutions approved as mortgagees.

The following institutions are hereby approved as mortgagees under section 203 of the National Housing Act:

(a) National Mortgage Associations;

(b) Federal Reserve Banks;

(c) Federal Home Loan Banks; and

(d) Any other Federal, State, or municipal governmental agency that is or may hereafter be empowered to hold mortgages insured under Title II of the National Housing Act as security or as collateral or for any other purpose.

§ 203.2 Federal Reserve members, other institutions.

Members of the Federal Reserve System, institutions whose accounts are insured by the Federal Savings & Loan Insurance Corporation and institutions whose deposits are insured by the Federal Deposit Insurance Corporation may be approved as mortgagees upon application.

§ 203.3 Charitable or nonprofit institutions.

Any charitable or nonprofit organization, including a pension fund or trust, which presents evidence that it is responsible, has permanent funds of not less than $100,000, and has experience in investment, may be approved upon application.

§ 203.4 Approval of other institutions.

(a) *General requirements.* Any mortgagee not identified in §§ 203.1 to 203.3 may be approved as a mortgagee, if it is a chartered institution; or is a permanent organization having succession; or is a trust. Any such mortgagee shall have sound capital funds properly proportioned to its liabilities and to the character and extent of its operation, and meet the requirements of either paragraph (b), (c) or (d) of this section.

(b) *Special requirements applicable to supervised institutions.* A mortgagee shall be subject to the inspection and supervision of a governmental agency which is required by law to make periodic examinations of its books and accounts and shall submit satisfactory evidence that it has sound capital funds of a value not less than $25,000 or, if a mutual company or association without capital funds, that it has a net worth of not less than $25,000.

(c) *Special requirements — non-supervised institutions.* A mortgagee not subject to inspection and supervision of a governmental agency as provided in the preceding paragraph shall have as its principal activity the lending or investment of funds under its own control in real estate mortgages; shall have sound capital funds of a value of not less than $100,000; shall submit a detailed audit of its books made by an accountant satisfactory to the Commissioner, reflecting a condition satisfactory to him; shall file with the Commissioner similar audits at least once in each calendar year so long as its approval as mortgagee continues; shall submit at any time to such examination of its books and affairs as the Commissioner may require; and shall comply with any other conditions that the Commissioner may impose. Prior to the approval of any such mortgagee, it shall submit an agreement in writing.

(1) That so long as it continues to be approved as a mortgagee, it will not issue, without the prior approval of the Commissioner, any mortgage participating certificates on which it assumes personal liability, or any guaranty with respect to principal or interest of any mortgage, except that any such obligations outstanding on the date of the application of such institution may thereafter be renewed; and

(2) That, except with the prior approval of the Commissioner, it will segregate escrow commitment deposits, work completion deposits, and all periodic payments under mortgages insured by the Commissioner, received by it on account of ground rents, taxes, assessments and insurance premiums, and will deposit such funds in a special account or accounts with some banking institution whose accounts are insured by the Federal Deposit Insurance Corporation and shall use such funds for no purpose other than that for which they were received.

(d) *Special requirements—loan correspondent mortgagees.* Requirements for approval as a loan correspondent mortgagee are identical with those for approval of nonsupervised mortgagees, except as follows:

(1) It may be approved with sound capital funds (net worth) of not less than $5,000;

(2) It shall be an authorized loan correspondent of, and its approval requested by, an approved mortgagee under governmental supervision, which is investing in insured mortgages for its own portfolio and whose past and future investment commitments are such as to assure the Commissioner enough business will be originated to enable the correspondent to successfully maintain its servicing accounts;

(3) It shall originate or purchase insured loans for sale only to its sponsor or sponsors;

(4) It, and its sponsor or sponsors shall agree to notify the Commissioner promptly upon termination of the loan correspondent agreement;

(5) Termination of the relationship with sponsor or sponsors will be cause for withdrawal of the loan correspondent mortgagee approval.

§ 203.5 Approval of individuals and organizations as investing mortgagees.

(a) The Commissioner hereby approves, as investing mortgagees, individuals and organizations which:

(1) Acquire one or more mortgages insured under section 203(b) of the Act; and

(2) Acquire these mortgages from a sponsoring mortgagee or another investing mortgagee; and

(3) Acquire these mortgages subject to the provisions set forth in this subpart.

(b) Insured mortgages may not be originated by an investing mortgagee.

§ 203.6 Approval of fiduciary investments.

(a) Approval as a mortgagee of a banking institution or trust company which is subject to the inspection and supervision of a governmental agency, shall be deemed to constitute approval of such institution or company when lawfully acting in a fiduciary capacity in investing fiduciary funds which are under its individual or joint control. Upon termination of such fiduciary relationship, whether by revocation or otherwise, any insured mortgages held in the fiduciary estate shall be transferred to a mortgagee approved under this section and the fiduciary relationship must be such as to permit such transfer.

§ 203.7 Withdrawal of approval.

(a) Approval of a mortgagee may be withdrawn at any time by notice from the Commissioner, by reason of:

(1) The transfer of an insured mortgage to a non-approved mortgagee;

(2) The failure of a non-supervised mortgagee to segregate all escrow funds received from mortgagors on account of ground rents, taxes, assessments and insurance premiums, and to deposit such funds to a special account or accounts with a banking institution whose accounts are insured by the Federal Deposit Insurance Corporation;

(3) The use of escrow funds for any purpose other than that for which they were received;

(4) The failure of a non-supervised mortgagee to conduct its business in accordance with the plan indicated by its application for approval;

(5) The termination of a mortgagee's supervision by a governmental agency;

(6) Such other reason as the Commissioner determines to be justified.

(b) Withdrawal of a mortgagee's approval shall not affect the insurance on mortgages accepted for insurance.

§ 203.8 Financial statements.

All approved mortgagees shall at any time upon request furnish the Commissioner with a copy of their latest periodic financial statement or report.

§ 203.9 Mortgage servicing.

All approved mortgagees are required to service insured loans in accordance with acceptable mortgage practices of prudent lending institutions. In the event of default, the mortgagee should be able to contact the mortgagor and otherwise exercise diligence in collecting the amounts due. The holder of the mortgage is responsible to the Commissioner for proper servicing, even though the actual servicing may be performed by an agent of such holder.

APPLICATION AND COMMITMENT

§ 203.10 Submission of application.

Any approved mortgagee may submit an application for insurance of a mortgage about to be executed, or of a mortgage already executed.

§ 203.11 Form of application.

The application must be made upon a standard form prescribed by the Commissioner.

dwellings held by the same mortgagor,

(11) Not in excess of three-quarters of

§ 203.12 Application fee.

(a) Applications filed for a commitment with respect to existing construction shall be accompanied by the mortgagee's check for the sum of $20 to cover the cost of processing.

(b) Applications filed for a commitment with respect to proposed construction shall be accompanied by the mortgagee's check for the sum of $45 to cover the cost of processing. Twenty dollars will be retained and the balance of such fee will be returned to the applicant if the mortgage which is the subject of the application is endorsed for insurance.

(c) The entire fee required by paragraphs (a), (b), and (d) of this section will be returned:

(1) If an application is refused as a result of preliminary examination;

(2) If the application is made on behalf of a veteran for the insurance of a mortgage to refinance an existing insured mortgage which is in default by reason of his military service, if the Commissioner finds that the collection of such fee would be inequitable under the circumstances of the transaction. For the purposes of this chapter the word veteran shall mean a person who has served in the active military or naval service of the United States at any time on or after September 16, 1940, and prior to July 26, 1947, or on or after June 27, 1950, and prior to February 1, 1955;

(3) In such other instances as the Commissioner may determine.

(d) Applications for insurance of a mortgage of the character described in § 203.43(b)(4) shall be accompanied by the mortgagee's check for the sum of $10 to cover the cost of processing.

(e) Requests for insurance endorsement of a mortgage processed under the Certified Agency Program shall be accompanied by the mortgagee's check for the sum of $10 to cover the cost of processing. The entire fee of $10 will be considered as earned by the Commissioner when received.

§ 203.13 Approval of application.

Upon approval of an application, acceptance of the mortgage for insurance will be evidenced by the issuance of a commitment setting forth, upon a form prescribed by the Commissioner, the terms and conditions upon which the mortgage will be insured.

§ 203.14 Builders warranty.

With respect to commitments issued on or after October 1, 1954, applications relating to proposed construction must be accompanied by an agreement in form satisfactory to the Commissioner executed by the seller or builder or such other person as the Commissioner may require agreeing that in the event of any sale or conveyance of the dwelling within a period of one year beginning with the date of initial occupancy, the seller, builder, or such other person will at the time of such sale or conveyance deliver to the purchaser or owner of such property a warranty in form satisfactory to the Commissioner warranting that the dwelling is constructed in substantial conformity with the plans and specifications (including amendments thereof or changes and variations therein which have been approved in writing by the Commissioner) on which the Commissioner has based his valuation of the dwelling. Such agreement must provide that upon the sale or conveyance of the dwelling and delivery of the warranty, the seller, builder or such other person will promptly furnish the Commissioner with a conformed copy of the warranty establishing by the purchaser's receipt thereon that the original warranty has been delivered to the purchaser in accordance with this section.

§ 203.15 Certification of appraisal amount.

An application with respect to insurance of mortgages on one- or two-family dwellings must be accompanied by an agreement satisfactory to the Commissioner, executed by the seller, builder or such other person as may be required by the Commissioner whereby such person agrees that prior to any sale of the dwelling the said person will deliver to the purchaser of such property a written statement in form satisfactory to the Commissioner setting forth the amount of the appraised value of the property as determined by the Commissioner.

§ 203.16 Certificate and contract regarding use of dwelling for transient or hotel purposes.

Every application filed with respect to insurance of mortgages on a two-, three-, or four-family dwelling, or a single-family dwelling which is one of a group of 5 or more single-family dwellings held by the same mortgagor, must be accompanied by a contract in form satisfactory to the Commissioner, signed by the proposed mortgagor covenanting and agreeing that so long as the proposed mortgage is insured by the Commissioner the mortgagor will not rent the housing or any part thereof covered by the mortgage for transient or hotel purposes, together with the mortgagor's certification under oath that the housing or any part thereof covered by the proposed mortgage will not be rented for transient or hotel purposes. For the purpose of this subchapter rental for transient or hotel purposes shall mean (a) rental for any period less than 30 days or (b) any rental if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linen, and bellboy service.

ELIGIBLE MORTGAGES

§ 203.17 Mortgage provisions.

(a) *Mortgage form.* The mortgage shall be executed upon a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated and shall be a first lien upon property that conforms with property standards prescribed by the Commissioner. The entire principal amount of the mortgage must have been disbursed to the mortgagor or to his creditors for his account and with his consent.

(b) *Mortgage multiples.* The mortgage shall involve a principal obligation in an amount of $100 or multiples thereof. A mortgage having a principal obligation not in excess of $15,000 and an amortization period of either 20, 25, 30, or 35 years may be in an amount of $50 or multiples thereof.

(c) *Payments and maturity dates.* The mortgage shall:

(1) Come due on the first of a month;

(2) Have a maturity satisfactory to the Commissioner which is:

(i) Not less than 10 nor more than 30 years from the date of the beginning of amortization of the mortgage, except that if a dwelling was approved for insurance by the Commissioner prior to the beginning of construction the mortgage may have a maturity of 35 years from the date of the beginning of amortization of the mortgage, or

(ii) Not in excess of three-quarters of the Commissioner's estimate of the remaining economic life of the building improvements, whichever is lesser.

(3) Have an amortization period of either 10, 15, 20, 25, 30 or 35 years by providing for either 120, 180, 240, 300, 360 or 420 monthly amortization payments.

(4) Provide for payments to principal and interest to begin not later than the first day of the month following 60 days from the date the mortgagee's certificate on the commitment was executed.

§ 203.18 Maximum mortgage amounts.

(a) *Occupant mortgagors.* A mortgage executed by a mortgagor who is an occupant of the property shall not exceed the lesser of the following:

(1) Depending upon the design of the structure

(i) $25,000 for a one-family residence;

(ii) $27,500 for a two-family residence;

(iii) $27,500 for a three-family residence;

(iv) $35,000 for a four-family residence.

(2) 97 percent of $15,000 of the appraised value of the property, as of the date the mortgage is accepted for insurance, and 90 percent of such value in excess of $15,000 but not in excess of $20,000, and 75 percent of such value in excess of $20,000, if:

(i) The dwelling was approved for insurance by the Commissioner prior to the beginning of construction; or

(ii) Construction was completed more than one year preceding the date of the application for insurance; or

(iii) The dwelling was approved for guaranty, insurance, or direct loan by the Administrator of Veterans Affairs prior to the beginning of construction.

(3) 90 percent of $20,000 of the appraised value of the property, as of the date the mortgage is accepted for insurance, and 75 percent of such value in excess of $20,000, if the dwelling does not meet the requirements of subparagraph (2) of this paragraph.

(b) *Nonoccupant mortgagors.* A mortgage executed by a mortgagor who is not the occupant of the property shall not exceed:

(1) 85 percent of any amount computed under paragraph (a) of this section; or

(2) The full amount computed under paragraph (a) of this section if the mortgage covers a one- or two-family residence and the Commissioner is furnished with certificates indicating that:

(i) [Reserved]

(ii) The mortgagor will not rent (except for a rental term of not less than 30 days and not more than 60 days), sell (except where the insured mortgage is paid in full as an incident of the sale), or occupy the property prior to the 18th amortization payment of the mortgage except with the prior written approval of the Commissioner;

(iii) Not less than 15 percent of the original principal amount of the mortgage proceeds has been deposited in an escrow, trust, or special account;

(iv) The mortgagor agrees that, if the property is not sold prior to the due date of the 18th amortization payment of the mortgage to a purchaser acceptable to the Commissioner who will occupy the property, assume, and agree to pay the mortgage indebtedness, the amount held in escrow, trust, or special account will be applied in reduction of the outstanding principal amount of the mortgage as of the due date of the 18th amortization payment of the mortgage;

(v) [Reserved]

(vi) The mortgagee agrees that any portion of the fund held in escrow, trust, or special account, not applied to the mortgage in accordance with the provisions of this paragraph, shall be deducted from the amount of debentures to which the mortgagee would otherwise be entitled if a claim for debentures is filed.

(c) *Outlying area properties.* A mortgage covering a single-family residence located in an area where the Commissioner finds it is not practicable to obtain conformity with many of the requirements essential to insurance of mortgages in built up urban areas, or to be used as a farm home on a plot of land, five or more acres in size, adjacent to a public highway, shall not exceed:

(1) $9,000;

(2) 97 percent of the appraised value of the property as of the date the mortgage is accepted for insurance, if:

(i) The dwelling was approved for insurance by the Commissioner prior to the beginning of construction; or

(ii) Construction was completed more than one year preceding the date of the application for insurance; or

(iii) The dwelling was approved for guaranty, insurance, or direct loan by the Administrator of Veterans Affairs prior to the beginning of construction.

(3) 90 percent of the appraised value of the property as of the date the mortgage is accepted for insurance in the case of all properties not meeting the requirements of subparagraph (2) of this paragraph; and

(4) 85 percent of the appraised value of the property if the mortgagor is not an occupant thereof.

(d) *Disaster victims.* A mortgage covering a single-family dwelling executed by a mortgagor who will occupy the dwelling and who establishes that the home which he previously occupied as owner or tenant was destroyed or damaged to such an extent that reconstruction or replacement is required as a result of a flood, fire, earthquake, storm or other catastrophe which the President has determined to be a major disaster, and the application for insurance is filed within one year from the date of such determination may be in an amount not in excess of the lesser of the following:

(1) $12,000;

(2) The appraised value of the property as of the date the mortgage is accepted for insurance.

§ 203.19 Mortgagor's minimum investment.

(a) At the time the mortgage is insured the mortgagor shall have paid on account of the property at least 3 percent of the Commissioner's estimate of the cost of acquisition or such larger amount as the Commissioner may determine in cash or its equivalent.

(b) A mortgagor who is 62 years of age or older as of the date the mortgage is accepted for insurance or a mortgagor under a mortgage meeting the requirements of § 203.18(c), may borrow from a corporation or person satisfactory to the Commissioner, the payment required by this section, plus settlement costs which may include initial payments for taxes, hazard insurance, mortgage insurance premium and other prepaid expenses as determined by the Commissioner. As security for the loan the mortgagor may give a note or other evidence of indebtedness bearing interest at a rate not in excess of that permitted in the insured mortgage. The aggregate amount of the insured mortgage and the loan referred to in this section shall not exceed an amount equal to the Commissioner's estimate of the appraised value of the property, plus an amount equal to the initial payments for taxes, hazard insurance, mortgage insurance premium, and other prepaid expenses as determined by the Commissioner.

§ 203.20 Maximum interest rate.

(a) The mortgage may bear interest at such rates as may be agreed upon by the mortgagee or mortgagor but in no case shall such interest rate exceed:

(1) 5¾ percent with respect to mortgages endorsed for insurance pursuant to applications received by the Commissioner before February 2, 1961, or

(2) 5½ percent with respect to mortgages endorsed for insurance pursuant to applications received by the Commissioner on or after February 2, 1961, or

(3) 5¼ percent with respect to mortgages endorsed for insurance pursuant to applications received by the Commissioner on or after May 29, 1961.

(b) Interest shall be payable in monthly installments on the principal then outstanding.

§ 203.21 Amortization provisions.

The mortgage must contain complete amortization provisions satisfactory to the Commissioner, requiring monthly payments by the mortgagor not in excess of his reasonable ability to pay as determined by the Commissioner. The sum of the principal and interest payments in each month shall be substantially the same.

§ 203.22 Payment of insurance premiums or charges; prepayment premiums.

(a) The mortgage may provide for monthly payments by the mortgagor to the mortgagee of an amount equal to one-twelfth of the annual mortgage insurance premium payable by the mortgagee to the Commissioner. If the mortgage contains a provision permitting the holder to make future "open-end" advances or is amended or modified to include such a provision, the mortgage may provide for a monthly payment by the mortgagor of an amount equal to one-twelfth of the annual charge, payable by the mortgagee to the Commissioner for insurance of such advances. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) The mortgage should provide that upon the payment of the mortgage before maturity, the mortgagor shall pay the adjusted premium charge referred to in this subchapter, but shall not provide for the payment of any further charge on account of such prepayment.

§ 203.23 Mortgagor's payments to include other charges.

(a) The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize the ground rents, if any, and the estimated amount of all taxes, special assessments, if any, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become delinquent. The mortgage shall further provide that such payments shall be held by the mortgagee in a manner satisfactory to the Commissioner, for the purpose of paying such ground rents, taxes, assessments and insurance premiums before the same become delinquent, for the benefit and account of the mortgagor. The mortgage must also make provision for adjustments in case the estimated amount of such taxes, assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor.

(b) Mortgages involving a principal obligation not in excess of $9,000 may contain a provision requiring the mortgagor to pay to the mortgagee an annual service charge at such rate as may be agreed upon between the mortgagee and the mortgagor, but in no case shall such service charge exceed one-half of one percent per annum. Any such service charge shall be payable in monthly installments on the principal then outstanding. The provisions of this paragraph shall not apply to mortgages endorsed for insurance pursuant to applications received by the Commissioner on or after July 17, 1961.

§ 203.24 Application of payments.

(a) All monthly payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate

amount thereof shall be paid by the mortgagor each month in a single payment. The mortgagee shall apply the

ing and closing the loan, the charge not to exceed:

(i) $20 or 1 percent of the

§ 203.28 Economic soundness of project;

amount thereof shall be paid by the mortgagor each month in a single payment. The mortgagee shall apply the same to the following items in the order set forth:

(1) Premium charges under the contract of insurance, including insurance charges for open-end advances;

(2) Ground rents, taxes, special assessments, and fire and other hazard insurance premiums;

(3) Service charge, if any;

(4) Interest on the mortgage; and

(5) Amortization of the principal of the mortgage.

(b) Any deficiency in the amount of any such aggregate monthly payment shall, unless made good by the mortgagor prior to, or on, the due date of the next such payment, constitute an event of default under the mortgage.

§ 203.25 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed 2 cents for each dollar of each payment more than 15 days in arrears, to cover the extra expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

§ 203.26 Mortgagor's payments when mortgage is executed.

The mortgagor must pay to the mortgagee, upon the execution of the mortgage, a sum that will be sufficient to pay the ground rents, if any, and the estimated taxes, special assessments, and fire and other hazard insurance premiums for the period beginning on the date to which such ground rents, taxes, assessments, and insurance premiums were last paid and ending on the date of the first monthly payment under the mortgage plus an amount sufficient to pay the mortgage insurance premium from the date of closing the loan to the date of the first monthly payment.

§ 203.27 Maximum charges, fees or discounts.

(a) The mortgagee may collect from the mortgagor the following charges, fees or discounts:

(1) The application fees provided for in this part.

(2) A charge to compensate the mortgagee for expenses incurred in originating and closing the loan, the charge not to exceed:

(i) $20 or 1 percent of the original principal amount of the mortgage, whichever is the greater; or

(ii) $50 or 2½ percent of the original principal amount of the mortgage, whichever is the greater, with respect to mortgages on property under construction or to be constructed where the mortgagee makes partial disbursements and inspections of the property during the progress of contruction.

(3) Reasonable and customary amounts for any of the following items:

(i) Recording fees and recording taxes or other charges incident to recordation;

(ii) Credit Report;

(iii) Survey, if required by mortgagee or mortgagor:

(iv) Title examination; title insurance, if any;

(v) Such other reasonable and customary charges or fees as may be authorized by the Commissioner.

(4) Reasonable and customary charges in the nature of discounts if the mortgagor is:

(i) A builder constructing houses for sale who executes the mortgage in his own name;

(ii) Constructing a dwelling for his own occupancy; or

(iii) Refinancing a prior mortgage covering property owned by the mortgagor.

(iv) Purchasing the property from a governmental agency or municipal corporation which is precluded by statute from paying the discount.

(b) [Reserved]

(c) [Reserved]

(d) Prior to insurance of any mortgage, the mortgagee shall furnish to the Commissioner a signed statement in form satisfactory to the Commissioner, listing any charge, fee or discount collected by the mortgagee from the mortgagor. The Commissioner's endorsement of the mortgage for insurance shall constitute approval of the listed charges, fees or discounts.

(e) Nothing in this section will be construed as prohibiting the mortgagor from dealing through a broker who does not represent the mortgagee, if he prefers to do so, and paying such compensation as is satisfactory to the mortgagor in order to obtain mortgage financing.

§ 203.28 Economic soundness of project.

The mortgage must be executed with respect to a project which, in the opinion of the Commissioner, is economically sound except that this section shall not apply:

(a) To a mortgage of the character described in § 203.18(c) and with respect to such a mortgage the Commissioner shall determine that the mortgage is an acceptable risk giving consideration to the need for providing adequate housing for families of low and moderate income, particularly in suburban and outlying areas of small communities; or

(b) To a mortgage of the character described in § 203.18(d).

§ 203.29 Eligible mortgages in Alaska, Guam, or Hawaii.

(a) If the Commissioner finds that because of high costs in Alaska, Guam or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this subpart the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed, in any event, the maximum including high cost area increases, if any, otherwise applicable by more than one-half thereof.

(b) If the Alaska Housing Authority or the Government of Guam or Hawaii or any agency or instrumentality thereof is the mortgagor or mortgagee, or if the mortgagor is regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods of operation to such an extent and in such manner as the Commissioner determines advisable to provide reasonable rental and sales prices and a reasonable return on the investment, any mortgage otherwise eligible for insurance under this subpart, may be insured without regard to any requirement that the mortgagor:

(1) Be the owner and occupant of the property;

(2) Has paid on account of the property a prescribed percentage of the appraised value of the property; or

(3) Certify that the mortgaged property be free and clear of all liens other than the mortgage offered for insurance and that there will not be any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of the mortgaged property.

(c) The provisions of § 203.28 requiring economic soundness shall not be applicable to mortgages covering property located in Alaska or in Guam or in Hawaii, but the Commissioner shall find that the property or project is an acceptable risk giving consideration to the acute housing shortage in Alaska or in Guam or in Hawaii.

§ 203.30 Racial restriction covenant.

The mortgage shall contain a covenant by the mortgagor that until the mortgage has been paid in full, or the contract of insurance otherwise terminated, he will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the mortgaged property on the basis of race, color, or creed. Such covenant shall be binding upon the mortgagor and his assigns and shall provide that upon violation thereof the mortgagee may, at its option, declare the unpaid balance of the mortgage immediately due and payable.

§ 203.31 Owner-occupancy in military service cases.

Any mortgage otherwise eligible for insurance under any of the provisions of this part may be insured without regard to any requirement contained in this part that the mortgagor be the occupant of the property at the time of insurance, where the Commissioner is satisfied that the inability of the mortgagor to occupy the property is by reason of his entry into military service subsequent to the filing of an application for insurance and the mortgagor expresses an intent (in such form as may be prescribed by the Commissioner), to occupy the property upon his discharge from military service.

ELIGIBLE MORTGAGORS

§ 203.32 Mortgage lien.

A mortgagor must establish that after the mortgage offered for insurance has been recorded, the mortgaged property will be free and clear of all liens other than such mortgage and that there will not be outstanding any other unpaid obligation contracted in connection with the mortgage transaction or the purchase of the mortgaged property, except obligations which are secured by property or collateral owned by the mortgagor independently of the mortgaged property.

§ 203.33 Relationship of income to mortgage payments.

A mortgagor must establish that the periodic payments required in the mortgage submitted for insurance bear a proper relation to his present and anticipated income and expenses.

§ 203.34 Credit standing.

A mortgagor must have a general credit standing satisfactory to the Commissioner.

§ 203.35 Racial restrictions certificate.

A mortgagor must certify that until the mortgage has been paid in full, or the contract of insurance otherwise terminated, he will not file for record any restriction upon the sale or occupancy of the mortgaged property on the basis of race, color or creed or execute any agreement, lease or conveyance affecting the mortgaged property which imposes any such restriction upon its sale or occupancy.

§ 203.36 Certificate and contract regarding use of dwelling for transient or hotel purposes.

A mortgagor under a mortgage covering two-, three-, or four-family dwellings, or a single-family dwelling which is one of a group of 5 or more single-family dwellings held by the same mortgagor, must certify under oath that until the mortgage has been paid in full, or the contract of insurance otherwise terminated, the mortgagor will not rent, permit the rental or permit the offering for rental of the housing, or any part thereof, covered by such mortgage, for transient or hotel purposes. The mortgagor shall further execute a contract with the Commissioner providing that so long as the said mortgage is insured he will not rent such housing, or any part thereof, for transient or hotel purposes as such purposes are defined in § 203.16.

ELIGIBLE PROPERTIES

§ 203.37 Nature of title to realty.

A mortgage to be eligible for insurance must be on real estate held in fee simple, or on leasehold under a lease for not less than 99 years which is renewable, or under a lease with a period of not less than 50 years to run from the date the mortgage is executed.

§ 203.38 Location of dwelling.

At the time a mortgage is insured there must be located on the mortgaged property a dwelling unit designed principally for residential use for not more than four families. Such unit may be connected with other dwellings by a party wall or otherwise.

§ 203.39 Standards for buildings.

The buildings on the mortgaged property must conform with the standards prescribed by the Commissioner.

§ 203.40 Location of property.

The mortgaged property, if otherwise acceptable to the Commissioner, may be located in any community where the housing standards meet the requirements of the Commissioner.

§ 203.41 Racial restrictions on property.

A mortgagee must establish that no restriction upon the sale or occupancy of the mortgaged property, on the basis of race, color, or creed, has been filed of record at any time subsequent to February 15, 1950, and prior to the recording of the mortgage offered for insurance.

§ 203.42 Rental properties.

(a) A mortgage on property upon which there is a dwelling to be rented by the mortgagor shall not be eligible for insurance if said property is a part of, or adjacent or contiguous to a project, subdivision or group of similar rental properties which involve twelve or more dwelling units if the mortgagor has any financial interest in said properties: *Provided*, That with respect to applications received by the Commissioner on or after August 31, 1955, the number of dwelling units referred to in this paragraph shall be reduced to eight.

(b) No two-, three-, or four-family dwelling nor single-family dwelling, if it is a part of a group of five or more single-family dwellings held by the same mortgagor or any part or unit thereof, shall be rented or offered for rent for transient or hotel purposes, as defined in § 203.16, so long as such dwelling is subject to any insured mortgage.

§ 203.43 Eligibility of miscellaneous type mortgages.

(a) A mortgage which meets the requirements of this subpart, except as modified by this section, shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(b) The mortgage may be accepted for insurance if—

(1) Executed in connection with the sale by the Government, or any agency or official thereof, of any housing acquired or constructed under Public Law 849, Seventy-sixth Congress, as amended; Public Law 781, Seventy-sixth Congress, as amended; or Public Laws 9, 73 or 353, Seventy-seventh Congress, as amended (including any property acquired, held or constructed in connection with such housing or to serve the inhabitants thereof); or

(2) Executed in connection with the sale by the Public Housing Administration, or by any public housing agency with the approval of the said Administration, or any housing (including any property acquired, held or constructed in connection with such housing or to serve the inhabitants thereof) owned or financially assisted pursuant to the provisions of Public Law 671, Seventy-sixth Congress; or

(3) Executed in connection with the sale by the Government, or any agency or official thereof, or any of the so-called Greenbelt towns, or parts thereof, including projects, or parts thereof, known as Greenhills, Ohio; Greenbelt, Maryland; and Greendale, Wisconsin, developed under the Emergency Relief Appropriation Act of 1935; or of any of the village properties or employee's housing under the jurisdiction of the Tennessee Valley Authority; or of any housing under the jurisdiction of the Department of the Interior located within the town area of Coulee Dam, Washington, acquired by the United States for the construction, operation, and maintenance of Grand Coulee Dam and its appurtenant works or of any permanent housing under the jurisdiction of the Department of the Interior constructed under the Boulder Canyon Project Act of December 21, 1928, as amended and supplemented, located within the Boulder City municipal area; or

(4) Executed in connection with the sale by the Government, or any agency or official thereof, of any housing (including any property acquired, held, or constructed in connection therewith or to serve the inhabitants thereof) pursuant to the Atomic Energy Community Act of 1955, as amended: *Provided*, That such insurance shall be issued without regard to any preferences or priorities except those prescribed by the National Housing Act or the Atomic Energy Community Act of 1955, as amended; or

(5) Executed in connection with the sale by a State or municipality, or an agency, instrumentality, or political subdivision of either, of a project consisting of any permanent housing (including any property acquired, held or constructed in connection therewith or to serve the inhabitants thereof), constructed by or on behalf of such State, municipality, agency, instrumentality or political subdivision, for the ocupancy of veterans (as defined in § 203.12) their families and others: *Provided*, That the principal obligation of a mortgage referred to in this subparagraph shall not exceed 90 percent of the appraised value of the mortgaged property; or

(6) Executed in connection with the first resale, within two years from the date of its acquisition from the Government, of any portion of a project or property of the character described in subparagraphs (1), (2), (3), and (4) of this paragraph; or

(7) Given to refinance an existing mortgage insured under section 903 of the act: *Provided*, That any such refinancing mortgage shall not exceed the original principal amount or the unexpired term of such existing mortgage.

(c)–(f) [Reserved]

(g) The provisions of § 203.28 shall not apply to mortgages insured under this section.

(h) The provisions of § 203.38 shall not apply to mortgages of the character described in paragraph (b) of this section and at the time any such mortgage is insured there must be located on the mortgaged property a dwelling unit designed principally for residential use for not more than eight families.

(i) [Reserved]

(j) Notwithstanding the provisions of § 203.12(a), in connection with mortgages on properties located within the Boulder City municipal areas as provided in subparagraph (3) and mortgages of the character described in subparagraph (4) of paragraph (b), applications for commitments shall be accompanied by the mortgagee's check for the sum of $10 to cover the cost of processing by the Commissioner. If an application is refused as a result of preliminary examina-

tion by the Commissioner, or in such commitment setting forth upon a form

der a lease with a period of not less than 50 years to run from the date the mortgage is executed.

modified by this section, shall be eligible for insurance under this subpart subject

Act of 1955, as amended: *Provided*, That

fused as a result of preliminary

tion by the Commissioner, or in such other instances as the Commissioner may determine, the entire fee will be returned to the applicant.

OPEN-END ADVANCES

§ 203.44 Eligibility of open-end advances.

Any approved mortgagee may make advances, referred to in this subpart as "open-end" advances, in connection with the mortgages previously insured under this subchapter or insured after the effective date of this subpart, subject to compliance with the requirements of this section.

(a) The proceeds of any open-end advance must be used for the purpose of improvements or repairs which in the Commissioner's discretion substantially protect or improve the basic livability or utility of the property involved. The proceeds of such advances shall not be used for the purpose of financing obligations previously incurred for such repairs or improvements.

(b) The mortgagee shall submit an application for insurance of open-end advances upon a standard form prescribed by the Commissioner.

(c) Applications filed must be accompanied by the mortgagee's remittance for the sum of $10 for processing of the application. If an application is refused as a result of preliminary examination by the Commissioner or in such other instances as the Commissioner may determine the entire fee will be returned to the applicant.

(d) In addition to the application fee required by paragraph (c) of this section, the mortgagee may charge the mortgagor a fee not to exceed $25 or 1 percent of the open-end advance, whichever is the lesser, and the amount of out-of-pocket expenditures made by the mortgagee for customary costs of title search and recording fees. The mortgagee may require the mortgagor to pay to the mortgagee all charges permitted under this section on or prior to the date of final disbursement of the open-end advance, together with a sum sufficient to pay the initial insurance charge provided for in § 203.307. No portion of such charges may be included in the principal amount of the open-end advance.

(e) Upon approval of an application, acceptance of the advance for insurance will be evidenced by the issuance of a commitment setting forth, upon a form prescribed by the Commissioner, the terms and conditions upon which the advance will be insured.

(f) The amount of such advance shall be added to the unpaid principal obligation of the mortgage, whereupon the aggregate of the original unpaid principal and the amount of the open-end advance shall

(1) Bear interest at the rate provided in such mortgage, payable in monthly installments on the principal then outstanding;

(2) Be payable in substantially equal monthly payments in an amount sufficient to amortize the aggregate principal amount within the remaining original term of the mortgage.

(g) The amount of any such advance (computed in even dollar amounts) when added to the unpaid balance of the original principal obligation of the mortgage shall not exceed the original principal obligation of the mortgage: *Provided*, That if the mortgagor certifies that the proceeds of such open-end advance will be used to finance the construction of an additional room or rooms or other additional enclosed space as a part of the dwelling, the aggregate amount of the unpaid balance of the original principal obligation, plus the amount of the open-end advance, may exceed the amount of the original principal obligation of the mortgage, but in no event shall such aggregate amount exceed the maximum amounts prescribed by the limitations of § 203.18 or § 203.43.

(h) A mortgagee may amend or modify any approved FHA mortgage form by adding such provisions as it deems necessary for the purpose of making open-end advances, by any rider or modification agreement which is valid and enforceable in the jurisdiction in which the property covered by the mortgage is located, provided such rider or modification agreement retains in the mortgagee the right to approve or disapprove additional advances on such terms and conditions as the mortgagee may prescribe. The mortgagee will have the sole responsibility for determining that any mortgage amended by an "open-end" rider or modification agreement will be a valid and enforceable instrument and will constitute a valid first lien on the property upon which the Commissioner based his valuation.

INSURED HOME IMPROVEMENT LOANS

§ 203.50 Definitions.

As used in §§ 203.50 et seq. the term:

(a) "Act" means the National Housing Act, as amended.

(b) "Commissioner" means the Federal Housing Commissioner or his authorized representative.

(c) "Loan" means an advance of funds or credit evidenced by a note secured by a security instrument.

(d) "Note" means a note or other evidence of indebtedness executed, upon a form approved by the Commissioner, for use in the jurisdiction where the loan is disbursed.

(e) "Outstanding indebtedness relating to the property" means the total amount of outstanding obligations incurred in connection with improving, repairing or maintaining the property including those obligations constituting liens on the title to the property to be improved.

(f) "Lender" means an approved financial institution eligible for insurance under section 203(k) of the Act that is the holder of an insured loan or the holder of a loan presented for insurance.

§ 203.51 Eligible lenders.

Lenders meeting the applicable eligibility qualifications and requirements contained in §§ 203.1–203.4 and 203.6 shall be eligible for insurance of home improvement loans under §§ 203.50 et seq.

§ 203.52 Withdrawal of approval.

(a) Approval of a lender shall be considered as withdrawn where the Commissioner notifies the lender of a withdrawal of its approval as a mortgagee under Title II of the Act.

(b) Withdrawal of approval of a lender shall not affect the insurance on loans accepted for insurance.

§ 203.53 Financial statements.

The lender shall at any time upon request furnish the Commissioner with a copy of its latest periodic financial statement or report.

§ 203.54 Loan servicing.

The lender shall service insured loans in accordance with acceptable loan practices of prudent lending institutions. In the event of default, the lender shall be able to contact the borrower and otherwise exercise diligence in collecting the amounts due. The holder of the loan shall be responsible to the Commissioner for proper servicing, even though the actual servicing may be performed by an agent of the holder.

§ 203.55 Form of application.

The application shall be made on a form prescribed by the Commissioner.

§ 203.60 Application fee.

(a) *Payment of fee.* An application filed for a commitment shall be accompanied by the lender's check for $20 to cover the cost of processing.

(b) *Refund of fee.* If an application is refused as a result of preliminary examination, or in such other instances as the Commissioner may determine, the application fee shall be refunded.

§ 203.61 Issuance of commitment.

Upon approval of an application, the Commissioner shall issue a commitment setting forth the terms and conditions upon which the loan will be insured, including the extent and nature of the security required for the loan.

§ 203.62 Note and security form.

The lender shall present for insurance a note and security instrument on a form approved by the Commissioner which is valid and enforceable against the borrower or borrowers in the jurisdiction in which the property, covered by the security instrument, is situated.

§ 203.63 Disbursement of proceeds.

Prior to endorsement, the entire principal amount of the loan shall have been disbursed to the borrower or to his creditors for his account and with his consent.

§ 203.64 Loan multiples.

If the loan is not in excess of $10,000 it shall be in multiples of $50. If the loan exceeds $10,000 it shall be in multiples of $100.

§ 203.65 Loan payments.

The loan payment shall come due on the first of the month.

§ 203.70 Maturity of loan.

The loan shall have a maturity satisfactory to the Commissioner not less than 5 nor more than 20 years from the date of the beginning of amortization or

three-quarters of the Commissioner's estimate of the remaining economic life of the structure, whichever is the lesser.

§ 203.71 Loan amortization period.

The loan shall have an amortization period of either 5, 10, 15, or 20 years by providing for either 60, 120, 180, or 240 monthly amortization payments.

§ 203.72 Beginning of payments.

The loan shall provide for payments to interest and principal to begin not later than the first day of the month following 60 days from the date the lender's certificate on the commitment was executed.

§ 203.73 Minimum and maximum loan amounts.

The loan shall involve a minimum principal amount of $2,500 and shall not exceed:

(a) The Commissioner's estimate of the cost of improvements or $10,000 per family unit, whichever is the lesser; or

(b) An amount which, when added to any outstanding indebtedness related to the property, creates a total outstanding indebtedness which does not exceed the limits prescribed in § 203.18 for mortgages on properties of the same type other than new construction.

§ 203.74 Maximum interest rate.

(a) The loan shall bear interest at the rate to be agreed upon by the lender and the borrower, but in no case shall such interest rate exceed 6 percent per annum.

(b) Interest shall be payable in monthly installments on the principal then outstanding.

§ 203.75 Amortization provisions.

The loan shall contain complete amortization provisions satisfactory to the Commissioner, requiring monthly payments by the borrower not in excess of his reasonable ability to pay as determined by the Commissioner. The sum of the principal and interest payments in each month shall be substantially the same.

§ 203.80 Payment of insurance premiums or charges.

(a) The security instrument shall provide for monthly payments by the borrower to the lender of an amount equal to one-twelfth of the annual insurance premium payable by the lender to the Commissioner. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) The loan shall contain a provision permitting the loan to be prepaid in whole or in part upon any interest payment date after giving the lender 30 days advance written notice. No penalty or charge shall be imposed by the lender on account of such prepayment.

§ 203.81 Application of payments.

(a) All monthly payments to be made by the borrower to the lender shall be added together and the aggregate amount thereof shall be paid by the borrower each month in a single payment. The lender shall apply the same to the following items in the order set forth:

(1) Premium charges under the contract of insurance;

(2) Interest on the loan; and

(3) Amortization of the principal of the loan.

(b) Any deficiency in the amount of any such aggregate monthly payment shall, unless made good by the borrower prior to, or on, the due date of the next such payment, constitute an event of default under the loan.

§ 203.82 Use of proceeds.

(a) The proceeds of a loan shall be used only to finance improvements that result in or are in connection with the conservation, repair, restoration or refurbishing of the basic livability or utility of an existing structure, including the property on which the structure is located, or in the conversion, alteration, enlargement, remodeling or expansion of such structure, including a change in the living accommodations or the number of family dwelling units located therein.

(b) No loan proceeds shall be used to finance individual equipment items except those relating to heating, ventilating or plumbing or those items determined by the Commissioner to be necessary and incident to improvements as outlined in paragraph (a) of this section.

(c) The structure in connection with which the improvements are to be made shall:

(1) Constitute a structure which is used or will be used upon completion of the improvements, primarily for residential purposes by not more than four families; and

(2) Have been constructed not less than ten years prior to the date of the application for commitment unless, as determined by the Commissioner, the proceeds of the loan are or will be used primarily for major structural improvements, or to correct defects which are not known at the time of the completion of the structure or which were caused by fire, flood, windstorm or other casualty.

§ 203.83 Nature of borrower's ownership.

To be eligible for insurance, the property to be improved shall be owned by the borrower, or be leased by the borrower under a lease for not less than 99 years which is renewable, or be under a lease with a period of not less than 50 years to run from the date of the note.

§ 203.86 Credit standing.

The borrower shall have a general credit standing satisfactory to the Commissioner.

§ 203.90 Relationship of income to loan payments.

The borrower shall establish that the periodic payments required in the loan submitted for insurance bear a proper relation to his present and anticipated income and expenses.

§ 203.91 Certification as to outstanding indebtedness relating to the property.

The loan application shall be accompanied by a certification by the borrower, on a form prescribed by the Commissioner setting forth the total amount of outstanding obligations incurred in connection with improving, repairing or maintaining the property including those obligations constituting liens on the title to the property to be improved.

§ 203.92 Racial restrictions certificate.

The borrower shall certify that until the loan has been paid in full, or the contract of insurance otherwise terminated, he will not file for record any restriction upon the sale or occupancy of the property involved on the basis of race, color or creed or execute any agreement, lease or conveyance affecting the property which imposes any such restriction upon its sale or occupancy.

§ 203.93 Certificate and contract regarding use of dwelling for transient or hotel purposes.

An application filed with respect to insurance of a loan on a two-, three-, or four-family dwelling, or a single-family dwelling which is one of a group of 5 or more single-family dwellings held by the same borrower, shall be accompanied by a contract in form satisfactory to the Commissioner signed by the proposed borrower agreeing that so long as the loan is insured by the Commissioner the borrower will not rent the housing or any part thereof covered by the loan for transient or hotel purposes, together with the borrower's certification under oath that the housing or any part thereof covered by the proposed loan will not be rented for transient or hotel purposes. For the purpose of §§ 203.50 et seq. rental for transient or hotel purposes shall mean (a) rental for any period less than 30 days or (b) any rental if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linen, and bellboy service.

§ 203.94 Economic soundness.

The proceeds of the loan shall be used only for the improvement of property which in the opinion of the Commissioner is economically sound.

§ 203.100 Charges and fees to lender from borrower.

The lender may collect from the borrower the following charges and fees:

(a) *Application fee.* The application fee provided for in this subchapter.

(b) *Originating and closing charge.* A charge to compensate the lender for expenses incurred in originating and closing the loan, the charge not to exceed one percent of the original principal amount of the loan.

(c) *Amounts for other items.* Reasonable and customary amounts for any of the following items:

(1) Recording fees and recording taxes or other charges incident to recording security.

(2) Credit report.

(3) Title examination.

(4) Title insurance.

(5) Such other reasonable and customary charges or fees as may be authorized by the Commissioner.

(1) "Adjusted mortgage insurance premium" means the premium paid by

§ 203.101 Report and approval of charges and fees.

Prior to insurance of any loan, the lender shall furnish to the Commissioner a signed statement in a form satisfactory to the Commissioner listing any charges or fees collected by the lender from the borrower. The Commissioner's endorsement of the note for insurance shall constitute approval of the listed charges or fees.

§ 203.102 Late charge.

The loan may provide for the collection by the lender of a late charge, not to exceed 2 cents for each dollar of each payment more than 15 days in arrears, to cover the extra expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the borrower and shall not be deducted from any aggregate monthly payment.

(Sec. 203, 75 Stat. 158)

EFFECTIVE DATE

§ 203.249 Effective date.

Unless otherwise specified, the rules in this subpart are effective as to all mortgages on which a commitment to insure is issued to an approved mortgagee on or after August 9, 1954.

Subpart B—Contract Rights and Obligations

DEFINITIONS

§ 203.251 Definitions.

As used in this subpart, the following terms shall have the meaning indicated:

(a) "Commissioner" means the Federal Housing Commissioner or his authorized representative.

(b) "Act" means the National Housing Act, as amended.

(c) "FHA" means the Federal Housing Administration.

(d) "Mortgage" means such a first lien upon real estate as is commonly given to secure advances on, or the unpaid purchase price of real estate under the laws of the jurisdiction where the real estate is situated, together with the credit instruments, if any, secured thereby.

(e) "Mortgagor" means the original borrower under a mortgage and his heirs, executors, administrators and assigns.

(f) "Mortgagee" means the original lender under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

(g) "Investing mortgagee" means individuals and organizations which acquire one or more mortgages insured under section 203(b) of the Act from a sponsoring mortgagee or another investing mortgagee subject to the provisions set forth in this part.

(h) "Sponsoring mortgagee" means any approved mortgagee other than a loan correspondent mortgagee or an investing mortgagee, who has sold and assigned an insured mortgage to an investing mortgagee or has entered into an agreement with an investing mortgagee for the servicing of an insured mortgage.

(i) "Insured mortgage" means a mortgage which has been insured as evidenced by the endorsement of the credit instrument for insurance by the Commissioner.

(j) "Contract of insurance" means the agreement evidenced by the endorsement of the Commissioner upon the credit instrument given in connection with an insured mortgage, incorporating by reference the regulations in this part and the applicable provisions of the Act.

(k) "MIP" means the mortgage insurance premium paid by the mortgagee to the Commissioner in consideration of the contract of insurance.

(l) "Adjusted mortgage insurance premium" means the premium paid by the mortgagee to the Commissioner in consideration of termination of the contract of insurance by reason of prepayment in full of the mortgage.

(m) "Termination charge" means the charge paid by the mortgagee to the Commissioner in consideration of terminating the contract of insurance pursuant to the joint request for such action made by the mortgagor and mortgagee.

(n) "Open-end advance" means an insured advance made by an approved mortgagee in connection with a previously insured mortgage, pursuant to an open-end provision in the mortgage.

(o) "Open-end insurance charge" means the charge paid by the mortgagee to the Commissioner in consideration of the insurance of an open-end advance.

(p) "Beginning of amortization" means the date one month prior to the date of the first monthly payment to principal and interest.

(q) "Maturity" means the date on which the mortgage indebtedness would be extinguished if paid in accordance with periodic payments provided for in the mortgage.

(r) "Debentures" means registered, transferable securities which are valid and binding obligations, issued in the name of the Mutual Mortgage Insurance Fund in accordance with the provisions of this part; such debentures are the primary liability of the Mutual Mortgage Insurance Fund and are unconditionally guaranteed as to principal and interest by the United States.

(s) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, and the Virgin Islands.

ENDORSEMENT AND CONTRACT OF INSURANCE

§ 203.255 Insurance of mortgage.

Upon compliance with a commitment, the Commissioner will insure the loan evidencing the insurance by an appropriate panel or endorsement placed on the original credit instrument, which will identify the regulations under which the loan is insured and the date of insurance.

§ 203.256 Insurance of open-end advance.

Insurance of an open-end advance will be evidenced by delivery of a certificate stating the amount of the advance,

the date of insurance, and the regulations under which the advance is insured.

§ 203.257 Contract created by endorsement.

The mortgage, including any open-end advances made thereunder and approved by the Commissioner, shall be an insured mortgage from the date of endorsement. The Commissioner and the mortgagee shall thereafter be bound by the regulations in this part with the same force and to the same extent as if a separate contract had been executed relating to the insured mortgage, including the provisions of the regulations in this subpart and of the Act.

MORTGAGE INSURANCE PREMIUMS—IN GENERAL

§ 203.260 Method of payment of MIP.

The payment of any MIP under this subpart shall be made to the Commissioner by the mortgagee either in cash or debentures issued by the Mutual Mortgage Insurance Fund at par plus accrued interest.

§ 203.261 Calculation of MIP.

The amount of any MIP shall be calculated in accordance with the amortization provisions of the mortgage, without taking into account delinquent payments or prepayments.

INITIAL MORTGAGE INSURANCE PREMIUM

§ 203.265 Amount of initial MIP.

The initial MIP shall be in an amount equal to ½ percent of the average outstanding principal obligation for the first year of amortization under the mortgage, without taking into account delinquent payments or prepayments.

§ 203.266 Due date of initial MIP.

The initial MIP shall be paid on the first anniversary date of the beginning of amortization following the date on which the insurance becomes effective by endorsement by the Commissioner.

§ 203.267 Period covered by initial MIP.

The initial MIP shall cover the period beginning with the date of insurance endorsement and ending on the next anniversary of the beginning of amortization. Subsequent premium payments shall cover the twelve month period following each anniversary date.

§ 203.268 Adjustment of initial MIP.

Regardless of whether the period covered by the initial MIP is more or less than one year, payment shall be made to the Commissioner on account of the initial MIP in an amount equal to ½ percent of the average outstanding principal obligation for the first year of amortization under the mortgage. If such payment is less than ½ percent or more than one percent of the outstanding principal balance, without taking into account delinquencies or prepayments, the initial MIP shall be adjusted to accord with the prescribed limitations. If such payment is within the prescribed limitations no adjustment shall be made and the amount of the payment shall be paid to the Commissioner as the initial MIP.

§ 203.269 Pro rata payment of initial MIP.

If termination of the contract of insurance occurs before the due date of the initial MIP, the mortgagee shall pay to the Commissioner (in addition to any adjusted premium or termination charge) the portion of the initial premium due to the first of the month following the effective termination date, which shall be computed from:

(a) The beginning of amortization, if insurance endorsement occurred within six months after the beginning of amortization; or

(b) The date of endorsement, if such endorsement occurred any time prior to the beginning of amortization, or during the second half of any amortization year.

ANNUAL MORTGAGE INSURANCE PREMIUM

§ 203.275 Amount of annual MIP.

After payment of the initial MIP an annual MIP shall be paid in an amount equal to ½ percent of the average outstanding principal obligation for the 12-month period preceding the date on which the premium becomes payable, without taking into account delinquent payments or prepayments.

§ 203.276 Due date of annual MIP.

After payment of the initial MIP an annual MIP shall be paid on each anniversary date of the beginning of amortization.

§ 203.277 Duration of annual MIP.

After payment of the initial MIP, the mortgagee shall pay an annual MIP to the Commissioner until:

(a) The mortgage is paid in full; or

(b) The deed to the Commissioner is filed for record; or

(c) The contract of insurance is otherwise terminated with the consent of the Commissioner.

§ 203.278 Pro rata payment of annual MIP.

(a) *In general.* If the insurance contract is terminated after the due date of the initial MIP the mortgagee shall pay to the Commissioner (in addition to any adjusted premium or termination charge) a portion of the current annual MIP prorated from the due date of the last annual MIP to the date the contract of insurance was terminated.

(b) *Computation of pro rata annual MIP.* For the purpose of computing the pro rata portion of the annual MIP the date of termination of insurance shall be the last day of the month in which:

(1) The mortgage was prepaid; or

(2) A voluntary termination request is received by the Commissioner; or

(3) The mortgagee has notified the Commissioner that it has acquired the mortgaged property but does not intend to convey title to the Commissioner; or

(4) The contract of insurance is otherwise terminated with the consent of the Commissioner.

ADJUSTED MORTGAGE INSURANCE PREMIUM

§ 203.285 Computation of adjusted premium.

Where the principal obligation of any mortgage accepted for insurance is paid in full before the due date of the 120th scheduled monthly payment, without taking into account delinquent payments or prepayments, the mortgagee shall pay to the Commissioner an adjusted premium of 1 percent of the original principal amount of the prepaid mortgage.

§ 203.286 Maximum adjusted MIP.

No adjusted premium shall exceed the aggregate amount of MIP which would have been payable if the mortgage had continued to be insured until the due date of the 120th scheduled monthly payment, without taking into account delinquent payments or prepayments.

§ 203.287 Prepayments excepted from adjusted premium charge.

No adjusted premium charge shall be due or payable to the Commissioner in the following instances:

(a) *New insured mortgage.* Where the insured loan is paid in full with or from the proceeds of a new loan on the same property which is insured by the Commissioner; or

(b) *Acceleration by partial prepayments.* Where the final maturity specified in the mortgage is accelerated solely by reason of partial prepayments made by the mortgagor which do not exceed in any one calendar year 15 percent of the original face amount of the mortgage, plus 15 percent of the original face amount of any open-end advances; or

(c) *Acceleration by payments for damages.* Where the final maturity specified in the mortgage is accelerated solely by reason of payments to principal to compensate for damage to the mortgaged property; or

(d) *Acceleration by partial release.* Where the final maturity specified in the mortgage is accelerated solely by reason of payment to principal to compensate for release of a part of the insured property approved by the Commissioner; or

(e) *Acceleration by application of escrow funds.* Where the final maturity specified in the mortgage is accelerated solely by reason of application of funds applied on the indebtedness as required by the Commissioner pursuant to an approved escrow; or

(f) *Payment involving condemnation proceedings.* Where the final maturity specified in the mortgage is accelerated solely by reason of payments to principal to compensate for the conveyance of the mortgaged property pursuant to condemnation proceedings or in lieu of condemnation proceedings; or

(g) *Payment involving foreclosure.* Where payment in full is made of a delinquent mortgage:

(1) On which foreclosure proceedings have been commenced; or

(2) For the purpose of avoiding foreclosure, if the transaction is approved by the Commissioner; or

(h) *Payment under court order.* Where payment in full is made pursuant to a court order; or

(i) *Sale of property to veterans.* Where payment in full is made within 60 days after the date the mortgage is

endorsed for insurance, provided the mortgagee submits to the Commissioner a certificate signed by the mortgagor certifying that such payment was made in connection with the sale of the property to a veteran for his occupancy as a home.

(j) Where payment in full is made after the due date of the 120th scheduled monthly payment, without taking into account delinquent payments or prepayments.

VOLUNTARY TERMINATION CHARGE

§ 203.295 Voluntary termination of insurance.

Upon request by the mortgagor and mortgagee and submission of the mortgage note for cancellation of the insurance endorsement, the Commissioner may terminate the insurance contract on any mortgage under this part covering a one- to four-family residence.

§ 203.296 Computation of voluntary termination charge.

In the event the Commissioner receives a request for voluntary termination of the insurance contract before the due date of the 120th scheduled monthly payment, without taking into account delinquent payments or prepayments, the mortgagee shall pay to the Commissioner a termination charge equal to 1 percent of the original principal amount of the mortgage except as otherwise provided in this subpart.

§ 203.297 Maximum voluntary termination charge.

In no event shall the charge for voluntary termination of the insurance contract exceed the aggregate amount of MIP which would have been payable if the mortgage had continued to be insured until the due date of the 120th scheduled monthly payment, without taking into account delinquent payments or prepayments.

§ 203.298 Exception from voluntary termination charge.

The insurance contract may be voluntarily terminated without payment of a termination charge if:

(a) The mortgage is delinquent and termination of insurance is for the purpose of avoiding foreclosure provided the transaction is approved by the Commissioner; or

(b) Foreclosure proceedings have been instituted.

(c) The request for voluntary termination of the contract of insurance is received by the Commissioner after the due date of the 120th scheduled monthly payment, without taking into account delinquent payments or prepayments.

OPEN-END INSURANCE CHARGE

§ 203.305 Open-end advance subject to open-end charge.

In the case of an insured open-end advance the mortgagee shall pay to the Commissioner, in addition to the regular MIP, an open-end insurance charge.

§ 203.306 Method of payment of open-end charge.

The payment of any open-end insurance charge under this subpart shall be made to the Commissioner by the mortgagee either in cash or debentures issued by the Mutual Mortgage Fund at par plus accrued interest.

§ 203.307 Calculation, amount, and due date of open-end charge.

The open-end insurance charge shall be in an amount equal to ½ percent per annum of the original principal obligation of the open-end advance and shall be payable on the same dates as the MIP. The initial open-end insurance charge shall be prorated to cover the period beginning with the first day of the month following the date of endorsement of the open-end advance and ending on the due date of the next MIP, and shall be computed without taking into account delinquent payments or prepayments.

§ 203.308 Duration of open-end charge.

The mortgagee shall pay an annual open-end insurance charge to the Commissioner until:

(a) The mortgage is paid in full; or

(b) The deed to the Commissioner is filed for record; or

(c) The contract of insurance is otherwise terminated with consent of the Commissioner.

§ 203.309 Pro rata payment of open-end charge.

Upon termination of the insurance contract, the mortgagee shall pay to the Commissioner (in addition to any adjusted premium, termination charge and pro rata MIP) a portion of the current open-end insurance charge prorated from the beginning of the open-end insurance charge period to the end of the month in which termination occurred.

TERMINATION OF INSURANCE CONTRACT

§ 203.315 Termination by conveyance to other than Commissioner.

(a) The contract of insurance shall be terminated if the mortgagee acquires the mortgaged property but does not convey it to the Commissioner.

(b) The contract of insurance shall be terminated if the property is bid in and acquired at a foreclosure sale by a party other than the mortgagee.

(c) The contract of insurance shall be terminated if after foreclosure the property is redeemed.

§ 203.316 Termination by prepayment of mortgage.

The contract of insurance shall be terminated if the mortgage is paid in full prior to its maturity.

§ 203.317 Termination by voluntary agreement.

The contract of insurance shall be terminated if the mortgagor and mortgagee jointly request termination.

§ 203.318 Notice of termination by mortgagee.

No contract of insurance shall be terminated until the mortgagee has given written notice thereof to the Commissioner within 30 days from the occurrence of one of the approved methods of termination set forth in this subpart.

§ 203.319 Pro rata payment of premiums and charges.

No contract of insurance shall be terminated until the mortgagee has paid to the Commissioner the pro rata portion of the current annual MIP, open-end insurance charge, adjusted premium, or termination charge as set forth in this subpart.

§ 203.320 Notice and date of termination by Commissioner.

The Commissioner shall notify the mortgagee that the contract of insurance has been terminated and the effective termination date. The termination date shall be the last day of the month in which:

(a) The mortgagee notifies the Commissioner that it has acquired the mortgaged property but does not intend to convey title to the Commissioner; or

(b) The mortgage was prepaid; or

(c) A voluntary termination request is received by the Commissioner; or

(d) The property is bid in and acquired at a foreclosure sale by a party other than the mortagee; or

(e) Foreclosure proceedings are instituted if the property is redeemed during the redemption period.

§ 203.321 Effect of termination.

Upon termination of the contract of insurance, the obligation to pay any subsequent MIP or open-end insurance charge shall cease and all rights of the mortgagor and mortgagee shall be terminated.

DEFAULT UNDER MORTGAGE

§ 203.330 Definition of default.

If the mortgagor fails to make any payment, or to perform any other obligation under the mortgage, and such failure continues for a period of 30 days, the mortgage shall be considered in default for the purposes of this subpart.

§ 203.331 Date of default.

For the purposes of this subpart, the date of default shall be considered as 30 days after—

(a) The first uncorrected failure to perform any obligation under the mortgage; or

(b) The first failure to make a monthly payment which subsequent payments by the mortgagor are insufficient to cover when applied to the overdue monthly payments in the order in which they became due.

§ 203.332 Notice of default.

The mortgagee shall, within 60 days after default as defined in this part, give written notice thereof to the Commissioner, unless such default has been cured or unless the Commissioner has been notified of a previous default which remains uncured.

§ 203.333 Reinstatment of defaulted mortgage.

If after default and prior to the completion of foreclosure proceedings the mortgagor shall pay to the mortgagee all monthly payments in default and such expenses as the mortgagee shall have incurred in connection with the

foreclosure proceedings, written notice shall be given to the Commissioner, and the insurance shall continue as if such default had not occurred.

SPECIAL FORBEARANCE RELIEF

§ 203.340 Conditions of special forbearance relief.

In addition to any other relief which may be afforded in the event of default, the Commissioner may approve special forbearance relief with respect to any mortgage covering a one- to four-family residence if he finds that:

(a) The default was due to circumstances beyond the mortgagor's control; and

(b) It is probable that the mortgage will be restored to a current condition within a reasonable period of time.

§ 203.341 Reimbursement for uncollected interest.

If payments received from the mortgagor during the period of special forbearance relief approved pursuant to § 203.340 are insufficient to pay interest at the mortgage rate, after applying such payments in the order set forth in the mortgage, and the mortgage is subsequently foreclosed, the debentures shall include an allowance for uncollected interest accrued during the period of such forbearance.

FORBEARANCE RELIEF FOR MILITARY PERSONNEL

§ 203.345 Postponement of principal payments—mortgagors in military service.

If the mortgagor is a person in military service, as defined in the Soldiers' and Sailors' Civil Relief Act of 1940, the mortgagee may, by written agreement with the mortgagor, postpone for the period of military service, and three months thereafter, any part of the monthly payment, which represents amortization of principal. The agreement shall contain a provision for the resumption of monthly payments thereafter in amounts which will completely amortize the mortgage debt within its original maturity. The agreement shall in no way affect the amount of the annual MIP which will continue to be calculated in accordance with the original amortization provisions of the mortgage.

§ 203.346 Postponement of foreclosure—mortgagors in military service.

If at any time during default the mortgagor is a "person in military service," as such term is defined in the Soldiers' and Sailors' Civil Relief Act of 1940, the period during which he is in such service shall be excluded in computing the one-year period within which the mortgagee shall commence foreclosure or acquire the property by other means as provided in this subpart. No postponement or delay in the prosecution of foreclosure proceedings during the period the mortgagor is in such military service shall be construed as failure on the part of the mortgagee to exercise reasonable diligence in prosecuting such proceedings to completion as required by this subpart.

ASSIGNMENT OF MORTGAGE

§ 203.350 Assignment of defaulted mortgage—in general.

The Commissioner may approve the assignment to him of any mortgage covering a one- to four-family residence if he finds that:

(a) The default was due to circumstances beyond the mortgagor's control; and

(b) It is probable that the mortgage will be restored to a current condition within a reasonable period of time.

§ 203.351 Application for debentures and fiscal data.

On the date the assignment of the mortgage is filed for record the mortgagee shall forward to the Commissioner the prescribed application for debentures and fiscal data pertaining to the mortgage transaction, together with receipts covering all disbursements, as required by the fiscal data form and other items as follows:

(a) *Credit and security instruments.* The original credit and security instruments assigned without recourse or warranty, except that no act or omission of the mortgagee shall have impaired the validity and priority of the mortgage;

(b) *Recorded assignment instrument.* The original of the recorded assignment of mortgage. If the original of the assignment is not available a copy shall be furnished and the original forwarded as soon as possible;

(c) *Hazard insurance.* All hazard insurance policies held in connection with the mortgaged property, together with a copy of the mortgagee's notification to the carrier authorizing the amendment of the loss payable clause substituting the Commissioner as the mortgagee;

(d) *Rights and interests.* An assignment of all rights and interests arising under the mortgage, and all claims of the mortgagee against the mortgagor or others arising out of the mortgage transaction;

(e) *Cash or property.* All cash or property held by the mortgagee or to which it is entitled, including deposits made for the account of the mortgagor and which have not been applied in reduction of the principal mortgage indebtedness;

(f) *Records and accounts.* All records, ledger cards, documents, books, papers and accounts relating to the mortgage transaction;

(g) *Additional information.* Any additional information or data which the Commissioner may require.

§ 203.352 Title evidence upon assignment.

Within 60 days after the assignment of a mortgage is filed for record the mortgagee shall furnish to the Commissioner all title evidence held by the mortgagee, extended to include the assignment of the mortgage to the Commissioner.

§ 203.353 Certification by mortgagee.

At the time of assignment of the mortgage, the mortgagee shall certify to the Commissioner that:

(a) *Priority of mortgage to liens.* The mortgage is prior to all mechanics' and materialmen's liens filed of record, regardless of when such liens attach, and prior to all liens and encumbrances, or defects which may arise except such liens or other matters as may have been approved by the Commissioner;

(b) *Amount due.* The amount stated in the instrument of assignment is actually due and owing under the mortgage;

(c) *Offsets or counterclaims.* There are no offsets or counterclaims thereto and the mortgagee has a good right to assign.

CLAIM PROCEDURE

§ 203.355 Acquisition of property.

At any time within one year from the date of default, or such additional period of time as may be approved by the Commissioner, the mortgagee, at its election, shall either—

(a) Commence foreclosure of the mortgage; or

(b) If the laws of the State in which the mortgaged property is situated do not permit the commencement of foreclosure within one year from the date of default, the mortgagee shall commence foreclosure within 60 days after the expiration of the time during which such foreclosure is prohibited by such laws; or

(c) Acquire possession of, and title to, the mortgaged property by means other than foreclosure, such title being in the name of the mortgagee or the Commissioner.

§ 203.356 Notice of foreclosure.

The mortgagee shall give written notice to the Commissioner within 30 days after the institution of foreclosure proceedings and shall exercise reasonable diligence in prosecuting such proceedings to completion.

§ 203.357 Deed in lieu of foreclosure.

(a) *Mortgagors owning one property.* In lieu of instituting or completing a foreclosure, the mortgagee may acquire property from one other than a corporate mortgagor by voluntary conveyance from the mortgagor who certifies that he does not own any other property subject to a mortgage insured or held by FHA. Conveyance of the property by deed in lieu of foreclosure is approved subject to the following requirements:

(1) The mortgage is in default at the time the deed is executed and delivered;

(2) The credit instrument is cancelled and surrendered to the mortgagor;

(3) The mortgage is satisfied of record as a part of the consideration for such conveyance;

(4) The deed from the mortgagor contains a covenant which warrants against the acts of the grantor and all claiming by, through, or under him and conveys good marketable title;

(5) The mortgagee transfers to the Commissioner good marketable title accompanied by satisfactory title evidence.

(b) *Corporate mortgagors.* A mortgagee may accept a deed in lieu of foreclosure from a corporate mortgagor in compliance with the requirements of paragraph (a) if the mortgagee obtains the prior written consent of the Commissioner.

(c) *Mortgagors owning more than one property.* The mortgagee may accept a deed in lieu of foreclosure in compliance

amortization provisions of the mortgage. the mortgaged property, together with a tion, shall either— property. The mortgagee may accept a deed in lieu of foreclosure in compliance

with the provisions of paragraph (a) from an individual who owns more than one property which is subject to a mortgage insured or held by the FHA if the mortgagee obtains the prior written consent of the Commissioner.

§ 203.358 Direct conveyance of property.

In acquiring the property or conveying the property to the Commissioner the mortgagee may arrange for the deed to be made directly to the Commissioner from the mortgagor or other grantor. The mortgagee shall be responsible for determining that such conveyance will comply with all of the provisions of this part conveying good marketable title and satisfactory title evidence.

§ 203.359 Time of conveyance to Commissioner.

After acquiring good marketable title to and possession of the property the mortgagee shall transfer the property to the Commissioner:

(a) Within 30 days after acquiring possession of the mortgaged property by foreclosure or other means; or

(b) Within such further time as may be necessary to complete the title examination and perfect the title.

§ 203.360 Notice of property transfer and application for debentures.

On the date the deed is filed for record the mortgagee shall notify the Commissioner on a form prescribed by him of the filing of such conveyance and shall assign, without recourse or warranty any or all claims which the mortgagee has acquired in connection with the mortgage transaction, and as a result of the foreclosure proceedings or other means by which the mortgagee acquired or conveyed such property, except such claims as may have been released with the approval of the Commissioner.

§ 203.361 Acceptance of property by Commissioner.

Upon receipt of notice of property transfer the Commissioner shall accept title to and possession of the property as of the date of the filing for record of the deed to the Commissioner, subject to compliance with the regulations in this part.

§ 203.362 Conditions for withdrawal of application for debentures.

With the consent of the Commissioner, a mortgagee may withdraw an application for debentures if the mortgagee agrees that it will:

(a) Accept a reconveyance of the property under a deed which warrants against the acts of the Commissioner and all claiming by, through, or under him; and

(b) Promptly file a reconveyance for record; and

(c) Accept without continuation the title evidence which it furnished the Commissioner; and

(d) Reimburse the Commissioner for property expenditures as set forth in § 203.364.

§ 203.363 Reconveyance for noncompliance with regulations.

If, for any reason, the mortgagee fails to comply with the regulations in this subpart, the Commissioner may hold processing of the application for debentures in abeyance for a reasonable period of time in order to permit the mortgagee to comply or, in the alternative, the Commissioner may reconvey title to the property to the mortgagee in which event the application for debentures shall be considered as cancelled without prejudice to the rights of the mortgagee to reapply for debentures at a subsequent date as approved by the Commissioner.

§ 203.364 Mortgagee's liability for property expenditures.

In the event the Commissioner acquires any property and thereafter incurs an expense or makes an expenditure incidental to such property and it subsequently becomes necessary to reconvey the property to the mortgagee, because of the mortgagee's noncompliance with these regulations or because, with the consent of the Commissioner a mortgagee withdraws an application for debentures, the mortgagee shall assume liability for payment of all expenses incurred and unpaid by the Commissioner and reimburse the Commissioner for all expenditures made from the date the deed to the Commissioner was filed for record to the date of reconveyance of the property to the mortgagee, after appropriate adjustment on account of any income received from the property.

§ 203.365 Documents and information to be furnished Commissioner.

Within 60 days after the deed is filed for record the mortgagee shall forward to the Commissioner:

(a) The deed to the Commissioner and title evidence;

(b) Fiscal data pertaining to the mortgage transaction;

(c) Receipts covering all disbursements as required by the fiscal data form;

(d) Ledger cards covering the mortgage transaction;

(e) Any additional information or data which the Commissioner may require.

§ 203.366 Conveyance of marketable title.

The mortgagee shall tender to the Commissioner a satisfactory conveyance of title and transfer of possession of the property. The deed or other instrument of conveyance shall convey good marketable title to the property, which shall be accompanied by title evidence satisfactory to the Commissioner.

§ 203.367 Contents of deed and supporting documents.

The deed and supporting accompanying documents shall be as follows:

(a) *Deed.* A deed conveying the property to the Federal Housing Commissioner. The deed shall:

(1) Recite the name of the Commissioner followed by the phrase "of Washington, D.C., as Federal Housing Commissioner, his successors and assigns".

(2) Include covenants which warrant title against acts of the mortgagee and all claiming by, through, or under it.

(3) Recite nominal consideration, if such recital is adequate under the laws of the State in which the property is located or such other consideration as may be necessary to support the deed.

(b) *Corporate resolution.* A resolution of the mortgagee's board of directors, or other evidence, establishing that the person executing the deed has authority to act for the mortgagee.

(c) *Maps or survey.* A map or diagram showing property location with reference to public streets or roads or a survey, if available.

(d) *Credit documents.* The original credit and security instruments, if available or a deficiency judgment, if any, duly assigned or endorsed by the mortgagee, without recourse, to the Commissioner.

CONDITION OF PROPERTY

§ 203.375 Property condition.

When the property is transferred, or a mortgage is assigned to the Commissioner, the property shall be undamaged by fire, earthquake, flood, or tornado and undamaged by waste except as set forth in this subpart.

§ 203.376 Waste defined.

The term waste means permanent or substantial injury caused by unreasonable use, or abuse, and is not intended to include damage caused by ordinary wear and tear.

§ 203.377 Mortgagee's liability for waste.

(a) The mortgagee's liability for damage caused by waste shall not apply to mortgages on which the unpaid principal obligation (as increased by the amount of any open-end advances) at the time of the institution of foreclosure proceedings or the date of acquisition of the property otherwise after default exceeds 75 percent of the appraised value of the property as of the date the mortgage was accepted for insurance, and in any event, the obligation of the mortgagee to repair waste shall be limited to the amount of $100 for each family dwelling unit covered by the mortgage.

(b) Damage by waste, as defined in this part, which in the Commissioner's judgment does not exceed $25 shall not be considered as substantial injury and shall not be deducted from the debenture settlement.

§ 203.378 Adjustment for waste.

If the property has been damaged by waste as defined in this subpart, the Commissioner shall deduct from the debentures to be issued to the mortgagee an amount not to exceed the Commissioner's estimate of the cost of repairing the waste damage but not to exceed the limitation of $100 for each family dwelling unit covered by the mortgage.

§ 203.379 Adjustment for fire, flood, earthquake or tornado damage.

If the property has been damaged by fire, flood, earthquake or tornado, such damage shall be repaired prior to conveyance of the property or assignment

of the mortgage to the Commissioner, except that if prior approval of the Commissioner is obtained the damaged property may be conveyed to him or the mortgage assigned to him and he shall deduct from debentures an amount not to exceed the greater of (a) his estimate of the cost of repairing such damage or (b) the insurance recovery.

§ 203.380 Certificate of property condition.

The mortgagee shall either certify that as of the date of the filing for record of the deed, or assignment of the mortgage to the Commissioner, the property was undamaged by fire, flood, earthquake, tornado or waste, or shall describe the damage to the property resulting from such hazards as of such date. In the absence of evidence to the contrary, the mortgagee's certificate or description of the damage shall be accepted by the Commissioner as establishing the condition of the property as of such date.

§ 203.381 Occupancy of property.

Unless otherwise approved by the Commissioner the mortgagee shall certify that the property is vacant and does not contain any personal property as of the date of the filing for record of the deed to the Commissioner. This section shall not apply to a mortgage assigned to the Commissioner.

§ 203.382 Cancellation of hazard insurance.

The mortgagee shall cancel any hazard insurance policy as of the date of the filing for record of the deed to the Commissioner subject to the following conditions:

(a) The amount of the return premium due the mortgagee because of such cancellation may be calculated on a "short-rate" basis and reported on fiscal data supporting the application for debentures and the amount shall be deducted from the total amount claimed.

(b) If the mortgagee's calculation of the return premium is less than the actual return, the amount of the difference between the actual refund and the calculated amount shall be remitted to the Commissioner, accompanied by the carrier's or agent's statement.

(c) If the mortgagee's calculation of the return premium is more than the actual return, the mortgagee may file with the Commissioner a claim, supported by the carrier's or agent's statement of the amount of the refund, whereupon the Commissioner shall issue a check to the mortgagee in settlement of the claim.

PROPERTY TITLE TRANSFERS AND TITLE WAIVERS

§ 203.385 Types of satisfactory title evidence.

The following types of title evidence shall be satisfactory to the Commissioner:

(a) *Fee or owner's title policy.* A fee or owner's policy of title insurance, a guaranty or guarantee of title, or a certificate of title, issued by a title company, duly authorized by law and qualified by experience to issue such instruments. If an owner's policy of title insurance is furnished, it shall show title in the Commissioner and inure to the benefit of his successors in office.

(b) *Mortgagee's policy of title insurance.* A mortgagee's policy of title insurance supplemented by an Abstract and an Attorney's Certificate of Title covering the period subsequent to the date of the mortgage, the terms of the policy shall be such that the liability of the title company will continue in favor of the Commissioner after title is conveyed to him. The policy may be drawn in favor of the mortgagee and the Federal Housing Commissioner, "as their interests may appear", with the consent of the title company endorsed thereon;

(c) *Abstract and legal opinion.* An abstract of title prepared by an abstract company or individual engaged in the business of preparing abstracts of title and accompanied by the legal opinion as to the quality of such title signed by an attorney at law experienced in examination of titles. If title evidence consists of an Abstract and an Attorney's Certificate of Title, the search shall extend for at least forty years prior to the date of the Certificate to a well recognized source of good title;

(d) *Torrens of similar certificate.* A Torrens or similar title certificate; or

(e) *Title standard of U.S. or state government.* Evidence of title conforming to the standards of a supervising branch of the Government of the United States or of any State or Territory thereof.

§ 203.386 Coverage of title evidence.

Evidence of title shall be executed as of a date to include the recordation of the deed to the Commissioner. The evidence of title shall show that according to the public records, there are not, at such date, any outstanding prior liens, including any past-due and unpaid ground rents, general taxes or special assessments.

§ 203.387 Acceptability of customary title evidence.

If the title and title evidence are such as to be acceptable to prudent lending institutions and leading attorneys generally in the community in which the property is situated, such title and title evidence shall be satisfactory to the Commissioner and shall be considered by him as good and marketable.

§ 203.388 Conditional waiver of title objection.

The Commissioner shall not object to the title by reason of the following matters if they do not impair the value of the property for residential purposes or if they have been brought to the attention of the Commissioner for consideration in fixing the valuation:

(a) Customary easements for public utilities, party walls, driveways and other purposes;

(b) Customary building and use restrictions, when coupled with a reversionary clause, provided there has been no violation prior to the date of the deed to the Commissioner;

(c) Outstanding oil, water or mineral rights (or damage caused by the exercise of such rights) which are customarily waived by prudent lending institutions and leading attorneys generally in the community.

§ 203.389 Waived title objections.

The Commissioner shall not object to title by reason of the following matters:

(a) Violations of a restriction based on race, color or creed, even where such restriction provides for a penalty of reversion or forfeiture of title or a lien for liquidated damage, provided that there has not been an adverse judgment or pending suit in connection with the violation existing on the date the property is conveyed to the Commissioner;

(b) Easements for public utilities along one or more of the property lines and extending not more than 10 feet therefrom and for drainage or irrigation ditches along the rear 10 feet of the property, provided the exercise of the rights thereunder do not interfere with any of the buildings or improvements located on the subject property;

(c) Easements for underground conduits which are in place and do not extend under any buildings on the subject property;

(d) Mutual easements for joint driveways constructed partly on the subject property and partly on adjoining property, provided the agreements creating such easements are of record;

(e) Encroachments on the subject property by improvements on adjoining property where such encroachments do not exceed 1 foot, provided such encroachments do not touch any buildings or interfere with the use of any improvements on the subject property;

(f) Encroachments on adjoining property by eaves and overhanging projections attached to improvements on subject property where such encroachments do not exceed 1 foot.

(g) Encroachments on adjoining property by hedges, wooden or wire fences belonging to the subject property;

(h) Encroachments on adjoining property by driveways belonging to subject property where such encroachments do not exceed 1 foot, provided there exists a clearance of at least 8 feet between the buildings on the subject property and the property line affected by the encroachment;

(i) Variations between the length of the subject property lines as shown on the application for insurance and as shown by the record or possession lines, provided such variations do not interfere with the use of any of the improvements on the subject property and do not involve a deficiency of more than 2 percent with respect to the length of the front line or more than 5 percent with respect to the length of any other line;

(j) Encroachments by garages or improvements other than those which are attached to or a portion of the main dwelling structure over easements for public utilities, provided such encroachment does not interfere with the use of the easement or the exercise of the rights of repair and maintenance in connection therewith;

(k) Violations of cost or set back restrictions which do not provide a penalty of reversion or forfeiture of title, or a lien for liquidated damages which may be superior to the lien of the insured mortgage. Violations of such restrictions which do provide for such penalties, provided such penalty rights have been duly released or subordinated to the lien of the insured mortgage, or provided a policy of title insurance is furnished expressly insuring the Commissioner against loss by reason of such penalties.

(l) Customary building or use restrictions for breach of which there is no reversion and which have not been violated to a material extent.

DEBENTURE CHARACTERISTICS

§ 203.400 Delivery of debentures.

If the application for debentures is acceptable to the Commissioner he shall deliver to the mortgagee debentures of the Mutual Mortgage Insurance Fund.

§ 203.401 Debenture computation—conveyed properties.

The debentures shall have a face value to be determined by adding to the original principal of the mortgage (as increased by the amount of open-end advances made by the mortgagee and approved by the Commissioner) which was unpaid on the date of the institution of foreclosure proceedings, the acquisition of the property otherwise after default, or the property was acquired by the Commissioner under a direct conveyance by the mortgagor, the amount of all payments made by the mortgagee and allowances for items as set forth in § 203.402, less all items as set forth in § 203.403.

§ 203.402 Debenture computation—conveyed properties; items included.

The amount of debentures in connection with properties conveyed to the Commissioner shall include the following items:

(a) Taxes, ground rent and water rates, which are liens prior to the mortgage;

(b) Special assessments, which are noted on the application for insurance or which become liens after the insurance of the mortgage;

(c) Hazard insurance on the mortgaged property;

(d) MIP or open-end insurance charges paid after the institution of foreclosure proceedings or the acquisition of the property by direct conveyance or otherwise after default.

(e) Taxes imposed upon any deeds or other instruments by which said property was acquired by the mortgagee and transferred or conveyed to the Commissioner;

(f) Foreclosure costs or costs of acquiring the property otherwise (including costs of acquiring the property by the mortgagee and of conveying and evidencing title to the property to the Commissioner) actually paid by the mortgagee and approved by the Commissioner in an amount not in excess of two-thirds of such costs or $75, whichever is the greater;

(g) Reasonable payments made by the mortgagee, with the approval of the Commissioner, for the purpose of protecting, operating, or preserving the property;

(h) Any uncollected mortgage interest allowed pursuant to an approved forbearance plan;

(i) An amount which the Commissioner finds to be sufficient to compensate the mortgagee for any loss which it may have sustained on account of interest on debentures and the payment of any MIP and open-end insurance charge by reason of its having postponed the institution of foreclosure proceedings or the acquisition of the property by other means under a mortgage to which the provisions of sections 302 and 306 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, apply during any part or all of the period of the mortgagor's military service and three months thereafter.

§ 203.403 Debenture computation—conveyed properties; items deducted.

There shall be deducted from the total of the added items in §§ 203.401 and 203.402 any amount received on account of the mortgage after the institution of foreclosure proceedings or the acquisition of the property by direct conveyance or otherwise after default and from any source relating to the property on account of rent or other income after deducting reasonable expenses incurred in handling the property.

§ 203.404 Debenture computation—assigned mortgages.

Upon an acceptable assignment of a mortgage the Commissioner shall issue to the mortgagee debentures having a total face value equal to the unpaid balance of the loan at the time of assignment, plus any accrued mortgage interest and any advances made under the mortgage and approved by the Commissioner.

§ 203.405 Debenture interest rate.

Debentures shall bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect as of the date the commitment was issued, or as of the date the mortgage was endorsed for insurance, whichever rate is the higher. The following interest rates are effective for the dates listed:

Effective rate (percent)	On or after—	Prior to—
3¾	Jan. 1, 1959	July 1, 1959
4⅛	July 1, 1959	Jan. 1, 1961
3⅞	Jan. 1, 1961	July 1, 1961
3¾	July 1, 1961	

§ 203.406 Maturity of debentures.

Debentures shall mature 20 years from the date of issue.

§ 203.407 Registration of debentures.

Debentures shall be registered as to principal and interest.

§ 203.408 Denomination of debentures.

Debentures are available in denominations of $50, $100, $500, $1,000, $5,000, and $10,000. The Commissioner shall issue debentures in the largest available denominations unless otherwise requested by the mortgagee.

§ 203.409 Redemption of debentures.

Debentures shall, at the option of the Commissioner and with the approval of the Secretary of the Treasury, be redeemed at par and accrued interest on any interest payment day on three months' notice of redemption given in such manner as the Commissioner shall prescribe.

§ 203.410 Issue date of debentures.

The debentures shall be issued as of the date:

(a) The foreclosure proceedings were instituted; or

(b) The property was otherwise acquired by the mortgagee after default; or

(c) The property was acquired by the Commissioner if directly conveyed to the Commissioner from the mortgagor; or

(d) The mortgage was assigned to the Commissioner.

§ 203.411 Cash adjustment.

Any difference of less than $50 between the amount of debentures to be issued to the mortgagee and the total amount of the mortgagee's claim, as approved by the Commissioner, shall be adjusted by the issuance of a check in payment thereof.

CERTIFICATE OF CLAIM

§ 203.415 Delivery of certificate of claim.

In addition to the debentures and the cash adjustment check, the Commissioner shall deliver to the mortgagee a certificate of claim in accordance with section 204(e) of the Act, which shall become payable, if at all, in accordance with section 204(f) of the Act.

§ 203.416 Amount and items of certificate of claim.

The certificate shall be for an amount which the Commissioner determines to be sufficient to pay all amounts due under the mortgage and not covered by the amount of debentures and cash adjustment check. The certificate shall include a reasonable amount for necessary expenses incurred by the mortgagee in connection with the foreclosure proceedings or the acquisition of the mortgaged property otherwise and the conveyance therof to the Commissioner, including reasonable attorneys' fees, unpaid interest, and cost of repairs to the property made by the mortgagee to remedy the waste.

§ 203.417 Rate of interest of certificate of claim.

Each certificate of claim shall provide that there shall accrue to the holder thereof with respect to the face amount of such certificate, an increment at the rate of 3 percent per annum.

MUTUAL MORTGAGE INSURANCE FUND AND DISTRIBUTIVE SHARES

§ 203.420 Nature of Mutual Mortgage Insurance Fund.

The Mutual Mortgage Insurance Fund shall consist of the General Surplus Account and the Participating Reserve Account.

§ 203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.

For any semiannual period in which Mutual Mortgage Insurance operations shall result in a net income, or loss, the Commissioner shall allocate such net income or such loss to the General Surplus Account and/or to the Participating Reserve Account as he may determine to be in accord with sound actuarial and accounting practice. In determining net income or loss the Commissioner shall take into consideration all income received from fees, premiums and earnings on investments of the fund, operating expenses and provision for losses of the fund.

§ 203.422 Right and liability under Mutual Mortgage Insurance Fund.

No mortgagor or mortgagee shall have any vested right in a credit balance in either the General Surplus Account or the Participating Reserve Account. No mortgagor or mortgagee shall be subject to any liability arising under the mutuality of the Mutual Mortgage Insurance Fund.

§ 203.423 Distribution of distributive shares.

In the event the contract of insurance is terminated by reason of payment in full of the mortgage or by voluntary termination approved by the Commissioner, the Commissioner may distribute to the mortgagor a share of the Participating Reserve Account in such manner and amount as the Commissioner shall determine to be equitable and in accordance with sound actuarial and accounting practice.

§ 203.424 Maximum amount of distributive shares.

In no event shall a distributive share of the Participating Reserve Account exceed the aggregate scheduled annual premiums of the mortgagor to the year of termination of the insurance.

§ 203.425 Finality of determination.

The determination of the Commissioner as to the amount to be paid to any mortgagor from the Mutual Mortgage Insurance Fund shall be final and conclusive.

SALE, ASSIGNMENT AND PLEDGE OF INSURED MORTGAGE

§ 203.430 Sale of insured mortgage to approved mortgagee.

(a) When an insured mortgage is sold to another approved mortgagee, both seller and buyer shall notify the Commissioner of the sale within 30 days thereof.

(b) The provisions of paragraph (a) of this section shall not apply to the assignment, pledge or transfer of an insured mortgage to an investing mortgagee.

§ 203.431 Effect of sale of insured mortgage.

(a) When an insured mortgage is sold to another approved mortgagee, the buyer shall thereupon succeed to all the rights and become bound by all the obligations of the seller under the contract of insurance and the seller shall be released from its obligations under the contract of insurance.

(b) The provisions of paragraph (a) of this section shall not apply to the assignment, pledge or transfer of an insured mortgage to an investing mortgagee.

§ 203.432 Acceptable transfers by approved mortgagee.

(a) Any approved mortgagee may assign, pledge or transfer an insured mortgage, a group of such mortgages or a partial interest in such mortgage or mortgages to another approved mortgagee by means of any agreement, arrangement or device (including declarations of trust, participation certificates or trust certificates) if the transfer does not constitute a final sale.

(b) The provisions of paragraph (a) of this section shall not apply to an assignment, pledge or transfer of an insured mortgage to an investing mortgagee. However, upon the assignment of a mortgage to an investing mortgagee the credit instrument shall show on its face or on the reverse side thereof the date of assignment, the name of the assignee and the fact that any assignment or reassignment thereof is subject to compliance with the regulations of the FHA.

§ 203.433 Requirements of transfer by approved mortgagee.

(a) Any acceptable transfer by an approved mortgagee which does not constitute a final sale, shall provide that one of the approved mortgagees shall be the mortgagee of record under the contract of insurance and the Commissioner shall have no obligation to recognize or deal with any party except the approved mortgagee of record with respect to the rights, benefits and obligations of the mortgagee under the contract of insurance. With respect to transfers made pursuant to § 203.432 and this section, mortgagees are not required to notify the Commissioner of the transfer or to obtain the Commissioner's approval.

(b) The provisions of paragraph (a) of this section shall not apply to an assignment, pledge or transfer of an insured mortgage to an investing mortgagee. However, upon the assignment of a mortgage to an investing mortgagee the credit instrument shall show on its face or on the reverse side thereof the date of assignment, the name of the assignee and the fact that any assignment or reassignment thereof is subject to compliance with the regulations of the FHA.

§ 203.434 Sale or disposition of insured mortgage to other than approved mortgagee.

No mortgagee, investing mortgagee or sponsoring mortgagee shall sell or otherwise dispose of any insured mortgage, group of insured mortgages, or any partial interest in an insured mortgage or group of insured mortgages to anyone other than an approved mortgagee by means of any agreement, arrangement or device (including a declaration of trust, participation certificate or a trust certificate) except under the following conditions:

(a) *Information to be filed with Commissioner.* That the mortgagee, investing mortgagee or sponsoring mortgagee file with the Commissioner a copy of the proposed legal instruments together with a prospectus and such other material and information as the Commissioner may require; and

(b) *Provision for an approved mortgagee of record.* That the proposed agreements or legal instruments provide that one approved mortgagee will be the mortgagee of record under the contract of insurance and that the Commissioner shall have no obligation to recognize or deal with any other party except the approved mortgagee of record with respect to the rights, benefits and obligations of the mortgagee under the contract of insurance.

§ 203.435 Form of assignment to investing mortgagee.

(a) The assignment of the insured mortgage and credit instrument to an investing mortgagee shall contain the following paragraph:

It is a condition of this assignment that the assignee and his heirs, successors, executors, administrators and assigns shall be limited to the receipt of: (1) the principal recovery; (2) all net income from the insured mortgage; (3) the net proceeds from a sale of the mortgage; and (4) the transfer of any debentures, cash adjustment check, or certificates of claim issued by the Federal Housing Commissioner in the name of the assignor or the net proceeds of the foregoing. Unless made subject to the terms and conditions of this paragraph, no further assignment or transfer of this mortgage shall be valid unless and until: (1) the insurance contract with the Federal Housing Administration has been duly terminated in accordance with FHA Regulations; or (2) the mortgage is assigned to an FHA approved mortgagee other than a loan correspondent mortgagee or investing mortgagee. It is a further condition of this assignment that the assignor and assignee or his heirs or successors shall, at no time, take any action inconsistent with the FHA Regulations and the assignee will take no action which will prevent the assignor from complying with the FHA Regulations. All the rights and obligations under the contract or contracts of insurance with the Federal Housing Administration are retained by the assignor and FHA will have no obligation to recognize or deal with any other party except the assignor. The assignor shall have a tacit lien on the mortgage and any principal recovery and net income therefrom as security for the payment of any amounts the assignor may be required to pay for the benefit of the assignee. This paragraph is for the benefit of the Federal Housing Administration and may not be altered. This paragraph will be controlling in the event of any conflict with its provisions by any other agreement or covenant between the assignor and assignee, but shall no longer have any force or effect if the mortgage is assigned to an FHA approved mortgagee other than a loan correspondent mortgagee or an investing mortgagee.

(b) Any agreement to sell an insured

Account" and are unconditionally guar-

§ 203.448 Period covered by initial in-

½ percent of the average outstanding principal obligation for the 12-month

(b) Any agreement to sell an insured mortgage entered into by a sponsoring mortgagee with a prospective investing mortgagee shall contain the following paragraph:

It is mutually agreed by the parties that the assignment of the FHA insured mortgage and credit instrument described herein will contain the language as specified for inclusion in the assignment as set forth in the FHA Regulations. It is further agreed that the credit instrument to be assigned shall show on its face or on the reverse side thereof the date of assignment, the name of the assignee and the fact that any assignment or reassignment thereof is subject to compliance with the Regulations of the Federal Housing Administration.

INSURED HOME IMPROVEMENT LOANS

§ 203.440 Definitions.

All of the definitions contained in § 203.50 of this subchapter shall apply to §§ 203.300 et seq. In addition the following terms shall have the meaning indicated:

(a) "Insured loan" means a loan which has been insured by the FHA, as evidenced by the endorsement of the note for insurance, by the Commissioner.

(b) "Contract of insurance" means the agreement evidenced by the endorsement of the Commissioner upon the note given in connection with an insured loan, incorporating by reference the regulations in §§ 203.440 et seq. and the applicable provisions of the Act.

(c) "Insurance premium" means the loan insurance premium paid by the financial institution to the Commissioner in consideration of the contract of insurance.

(d) "Beginning of amortization" means the date one month prior to the date of the first monthly payment to principal and interest.

(e) "Maturity" means the date on which the loan indebtedness would be extinguished if paid in accordance with periodic payments provided for in the original note and security instrument.

(f) "Debentures" means registered, transferable securities which are valid and binding obligations, issued in the name of the "Section 203 Home Improvement Account" in accordance with the provisions of §§ 203.440 et seq.; such debentures are the primary liability of the "Section 203 Home Improvement Account" and are unconditionally guaranteed as to principal and interest by the United States.

§ 203.441 Insurance of loan.

Upon compliance with a commitment, the Commissioner shall insure the loan evidencing the insurance by an appropriate panel or endorsement placed on the original note, which will identify the regulations under which the loan is insured and the date of insurance.

§ 203.442 Contract created by endorsement.

The loan is insured from the date of endorsement. The Commissioner and the lender shall thereafter be bound by the Act and the regulations in §§ 203.440 et seq. with the same force and to the same extent as if a separate contract had been executed relating to the insured loan.

§ 203.443 Method of payment of insurance premium.

The payment of any insurance premium under §§ 203.440 et seq. shall be made to the Commissioner by the lender either in cash or debentures issued by the Section 203 Home Improvement Account at par plus accrued interest.

§ 203.444 Calculation of insurance premium.

The amount of any insurance premium shall be calculated in accordance with the amortization provisions of the loan without taking into account delinquent payments or prepayments.

§ 203.446 Amount of initial insurance premium.

The initial insurance premium shall be in an amount equal to ½ percent of the average outstanding principal obligation for the first year of amortization under the loan without taking into account delinquent payments or prepayments.

§ 203.447 Due date of initial insurance premium.

The initial insurance premium shall be paid on the first anniversary date of the beginning of amortization following the date on which the insurance becomes effective by endorsement by the Commissioner.

§ 203.448 Period covered by initial insurance premium.

The initial insurance premium shall cover the period beginning with the date of insurance endorsement and ending on the next anniversary of the beginning of amortization. Subsequent premium payments shall cover the twelve month period following each anniversary date.

§ 203.449 Adjustment of initial insurance premium.

Regardless of whether the period covered by the initial insurance premium is more or less than one year, payment shall be made to the Commissioner on account of the initial insurance premium in an amount equal to ½ percent of the average outstanding principal obligation for the first year of amortization under the loan. If such payment is less than ½ percent or more than one percent of the outstanding principal balance, without taking into account delinquencies or prepayments, the initial insurance premium shall be adjusted to accord with the prescribed limitations. If such payment is within the prescribed limitations no adjustment shall be made and the amount of the payment shall be paid to the Commissioner as the initial insurance premium.

§ 203.451 Pro rata payment of initial insurance premium.

If termination of the contract of insurance occurs before the due date of the initial insurance premium, the lender shall pay to the Commissioner the portion of the initial premium due to the first of the month following the effective termination date, which shall be computed from:

(a) The beginning of amortization, if insurance endorsement occurred within six months after the beginning of amortization; or

(b) The date of endorsement, if such endorsement occurred any time prior to the beginning of amortization, or during the second half of any amortization year.

§ 203.452 Amount of annual insurance premium.

After payment of the initial insurance premium an annual insurance premium shall be paid in an amount equal to ½ percent of the average outstanding principal obligation for the 12-month period preceding the date on which the premium becomes payable, without taking into account delinquent payments or prepayments.

§ 203.453 Due date of annual insurance premium.

After payment of the initial insurance premium an annual insurance premium shall be paid on each anniversary date of the beginning of amortization.

§ 203.454 Duration of annual insurance premium.

After payment of the initial insurance premium, the lender shall pay an annual insurance premium to the Commissioner until:

(1) The loan is paid in full; or

(2) The obligation is assigned to the Commissioner; or

(3) The contract of insurance is otherwise terminated with the consent of the Commissioner.

§ 203.456 Pro rata payment of annual insurance premium.

(a) *In general.* If the contract of insurance is terminated after the due date of the initial insurance premium, the lender shall pay to the Commissioner a portion of the current annual insurance premium prorated from the due date of the last annual insurance premium paid to the date the contract of insurance was terminated.

(b) *Computation of pro rata premium.* For the purpose of computing the pro rata portion of the annual insurance premium, the date of termination of insurance shall be the last day of the month in which:

(1) The loan was prepaid; or

(2) A voluntary termination request is received by the Commissioner, or

(3) The contract of insurance is otherwise terminated with the consent of the Commissioner.

§ 203.457 Voluntary termination of contract.

Upon request by the borrower and lender and submission of the original endorsed note for cancellation of the insurance endorsement, the Commissioner may terminate the insurance contract on the loan.

§ 203.458 Termination by prepayment of loan.

The contract of insurance shall be terminated if the loan is paid in full prior to its maturity.

§ 203.459 Notice of termination by lender.

No contract of insurance shall be terminated until the lender has given written notice thereof to the Commissioner within 30 days from the occurrence of one of the approved methods of termination set forth in §§ 203.440 et seq.

§ 203.462 Pro rata payment of premium before termination.

No contract of insurance shall be terminated until the lender has paid to the Commissioner the pro rata portion of the current annual insurance premium.

§ 203.463 Notice and date of termination by Commissioner.

The Commissioner shall notify the lender that the contract of insurance has been terminated and the effective termination. The termination date shall be the last day of the month in which:

(1) The loan was prepaid; or

(2) A voluntary termination request is received by the Commissioner, or

(3) The contract of insurance is otherwise terminated with the consent of the Commissioner.

§ 203.464 Effect of termination.

Upon termination of the contract of insurance, the obligation to pay any subsequent insurance premium shall cease and all rights of the borrower and lender shall be terminated.

§ 203.466 Definition of default.

If the borrower fails to make any payment, or to perform any other obligation under the loan and such failure continues for a period of 30 days, the loan shall be considered in default for the purposes of §§ 203.440 et seq.

§ 203.467 Date of default.

For the purposes of §§ 203.440 et seq. the date of default shall be considered as 30 days after—

(a) The first uncorrected failure to perform any obligation under the loan, or

(b) The first failure to make a monthly payment which subsequent payments by the borrower are insufficient to cover when applied to the overdue monthly payments in the order in which they became due.

§ 203.468 Notice of default.

The lender shall, within 60 days after default as defined in §§ 203.440 et seq. give written notice thereof to the Commissioner, unless such default has been cured or unless the Commissioner has been notified of a previous default which remains uncured.

§ 203.469 Reinstatement of defaulted loan.

If after default and prior to assignment by the lender of the loan to the Commissioner, the borrower shall pay to the lender all monthly payments in default, written notice shall be given to the Commissioner within 30 days and the insurance shall continue as if such default had not occurred.

§ 203.471 Conditions of special forbearance.

In addition to any other relief which may be afforded in the event of default, the Commissioner may approve special forbearance relief with respect to any loan if the Commissioner—

(a) Finds that default was due to circumstances beyond the borrower's control; and

(b) Finds that it is probable that the loan will be restored to a current condition within a reasonable period of time.

§ 203.472 Relief for borrower in military service.

If the borrower is a person in military service, as defined in the Soldiers' and Sailors' Civil Relief Act of 1940, the lender may, by written agreement with the borrower, postpone for the period of military service, and three months thereafter, any part of the monthly payment, which represents amortization of principal. The agreement shall contain a provision for the resumption of monthly payments thereafter in amounts which will completely amortize the obligation within its original maturity. The agreement shall in no way affect the amount of the annual insurance premium which shall continue to be calculated in accordance with the original amortization provisions of the loan.

§ 203.473 Election of action.

Where a real estate mortgage, deed of trust, conditional sales contract, chattel mortgage, lien, judgment, or any other security device has been used to secure the payment of a loan made under the provisions of § 203.440 et seq., the lender may not, except with the approval of the Commissioner, proceed against such security and also make claim under its contract of insurance, but shall elect which method it desires to pursue.

§ 203.474 Maximum claim period.

The claim shall be filed within one year from the date of default; or such additional period of time as may be approved by the Commissioner if there is granted an extension of the one year period within which claim shall be made.

§ 203.476 Claim application and items to be filed.

The claim for reimbursement on an insured loan shall be made upon an application form prescribed by the Commissioner. The application shall be accompanied by:

(a) The fiscal data pertaining to the loan transaction as required by the fiscal data form.

(b) Receipts covering all disbursements as required by the fiscal data form;

(c) The original note and the security held, assigned to the Commissioner without recourse or warranty, except that no act or omission of the lender, shall have impaired the validity and priority of such security;

(d) All hazard insurance policies held on property serving as security for the loan, together with a copy of the lender's notification to the carrier authorizing the amendment of the loss payable clause substituting the Commissioner as the holder of the security.

(e) The assignment to the Commissioner of all rights and interests arising under the loan, and all claims of the lender against the borrower or others arising out of the loan transaction;

(f) Any title evidence held by the lender;

(g) All cash or property held by the lender or to which it is entitled; including deposits made for the account of the borrower and which have not been applied in reduction of the principal loan indebtedness;

(h) All records, ledger cards, documents, books, papers and accounts relating to the loan transaction;

(i) Any additional information or data which the Commissioner may require.

§ 203.477 Certificate by lender when loan assigned.

At the time of the assignment of the loan, the lender shall certify to the Commissioner that:

(a) The amount stated in the instrument of assignment is actually due and owing on the loan;

(b) There are no offsets or counterclaims thereto, and the financial institution has a good right to assign.

§ 403.478 Debenture claim computation.

Upon acceptable assignment of the note and security instruments, the Commissioner shall deliver to the lender debentures of the Section 203 Home Improvement Account in an amount equal to the unpaid principal balance of the loan, plus:

(a) Any accrued interest due on the loan;

(b) Any advances made previously under the provisions of the loan instrument and approved by the Commissioner;

(c) Reimbursement for such reasonable collection costs, court costs, and attorney's fees as may be approved by the Commissioner.

§ 203.479 Debenture interest rate.

Debentures shall bear interest from the date of issue, payable semi-annually on the first day of January and the first day of July of each year at the rate in effect as of the date the commitment was issued, or as of the date the loan was endorsed for insurance, whichever rate is the higher. The following interest rates are effective for the dates listed:

Effective rate (percent)	On or after—	Prior to—
3¼	July 1, 1961	

§ 203.481 Maturity of debentures.

Debentures shall mature 10 years from the date of issue.

§ 203.482 Registration of debentures.

Debentures shall be registered as to principal and interest.

perform any obligation under the loan, or

ance with the original amortization provisions of the loan.

ing deposits made for the account of the borrower and which have not been ap-

Debentures shall be registered as to principal and interest.

§ 203.483 Denomination of debentures.

Debentures are available in denominations of $50, $100, $500, $1,000, $5,000 and $10,000. The Commissioner shall issue debentures in the largest available denominations unless otherwise requested by the lender.

§ 203.484 Redemption of debentures.

Debentures shall, at the option of the Commissioner and with the approval of the Secretary of the Treasury, be redeemed at par and accrued interest on any interest payment day on three months' notice of redemption given in such manner as the Commissioner shall prescribe.

§ 203.486 Issue date of debentures.

The debentures shall be issued as of the date of the execution of the assignment of the loan in accordance with the requirements of § 203.476(c).

§ 203.487 Cash adjustment.

Any difference of less than $50 between the amount of debentures to be issued to the lender and the total amount of the lender's claim, as approved by the Commissioner, shall be adjusted by the issuance of a check in payment thereof.

§ 203.488 Sale of insured loan to approved lender.

When an insured loan is sold to another approved lender, both seller and buyer shall notify the Commissioner of the sale within thirty days thereof on a form prescribed by the Commissioner.

§ 203.489 Effect of sale of insured loan to approved lender.

When an insured loan is sold to approved lender, the buyer shall thereupon succeed to all the rights and become bound by all the obligations of the seller under the contract of insurance and the seller shall be released from its obligations under the contract of insurance.

§ 203.491 Acceptable transfers by approved lender.

The lender may assign, pledge, or transfer an insured loan, a group of such loans, or a partial interest in such loan or loans, to another lender by means of any agreement, arrangement or device (including declaration of trust, participation certificate or trust certificates) if the transfer does not constitute a final sale.

§ 203.492 Requirements of transfer by lender.

Any acceptable transfer by a lender which does not constitute a final sale, shall provide that one of the lenders shall be the lender of record in the contract of insurance and the Commissioner shall have no obligation to recognize or deal with any party except the lender of record with respect to rights, benefits and obligations of the lender under the contract of insurance.

§ 203.493 Sale or disposition of insured loan to other than approved lender.

The lender shall not sell or otherwise dispose of any insured loan, group of insured loans, or any partial interest in an insured loan or group of insured loans to anyone other than an approved lender by means of any agreement, arrangement or device (including a declaration of trust, participation certificate or a trust certificate) except under the following conditions:

(a) *Information to be filed with Commissioner.* That the lender file with the Commissioner a copy of the proposed legal instruments, together with a prospectus and such other material and information as the Commissioner may require; and

(b) *Provision for an approved lender of record.* That the proposed agreements or legal instruments provide that one approved lender will be the lender of record under the contract of insurance and that the Commissioner shall have no obligation to recognize or deal with any other party except the approved lender of record with respect to the rights, benefits and obligations of the lender under the contract of insurance.

EXTENSION OF TIME

§ 203.496 Actions to be taken by mortgagee.

With respect to any action required by the mortgagee within a period of time prescribed by this subpart the Commissioner may extend such period.

AMENDMENTS

§ 203.497 Amendments not to change contractual rights.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee under the contract of insurance on any mortgage already insured or to be insured on which the Commissioner has made a commitment to insure.

APPLICABILITY AND EFFECTIVE DATE

§ 203.498 Applicability to outstanding loans and commitments.

The regulations in this subpart, as revised December 1, 1960, shall apply to all applications for debentures filed on or after that date in connection with mortgages insured prior to that date unless the mortgagee elects to apply for debentures under the provisions of regulations in effect as of the date the mortgage was insured or the date the commitment for insurance was issued.

§ 203.499 Effective date.

The regulations in this subpart are effective as to all mortgages with respect to which a commitment to insure is issued on or after December 1, 1960.

SUBCHAPTER D—RENTAL HOUSING INSURANCE

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

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EFFECTIVE DATE

207.264 Effective date.

AUTHORITY: §§ 207.1 to 207.264 issued under secs. 270, 211, 52 Stat. 16, as amended, 23, as amended; 12 U.S.C. 1713, 1715b.

Subpart A—Eligibility Requirements

APPLICATION AND COMMITMENTS

§ 207.1 Information for preliminary examination.

(a) Information required for the examination of a Rental Housing Project under section 207 shall be submitted in the form of an application for mortgage insurance by an approved mortgagee and by the sponsors of such project through the local Federal Housing Administration office, on approved FHA Application Form (executed in triplicate). No application will be considered unless the exhibits called for by such form are furnished and a fee of $1.50 per thousand of the face amount of the mortgage loan applied for (referred to as "application fee") is paid.

(b) (1) A further sum, referred to as commitment fee, which when added to the application fee will aggregate $3.00 per thousand of the face amount of the mortgage loan set forth in the commitment shall be paid within 30 days subsequent to the date of the commitment, or within such additional period of time as may be agreed to in writing by the Commissioner.

(2) In the case of a mortgagor of the character described in § 207.17(b), the application and commitment fees to be paid under this section shall be fixed by the Commissioner, but shall not exceed three dollars ($3.00) per thousand of the original face amount of the mortgage.

(c) Upon application for an increase in the amount of an existing commitment, an additional application fee of $1.50 per thousand dollars shall be paid based upon the amount of the increase requested. Any increase in the amount of a commitment shall be subject to the payment of an additional commitment fee which, when added to the additional application fee, will aggregate $3.00 per thousand of the amount of the increase. If the amount of the insured mortgage is increased after insurance and prior to final endorsement either by amendment or by the substitution of a new insured mortgage the fees herein provided for shall be based upon the amount of such increase.

(d) If an application is rejected before it is assigned for processing by the Commissioner, or in such other instances as the Commissioner may determine, the entire fee or any portion thereof may be returned to the applicant.

(e) The provisions of paragraph (b) (1) of this section requiring payment of a commitment fee shall not apply to mortgages insured pursuant to the provisions of § 207.31(b)(4) of this subpart.

(a) Upon approval of an application a commitment will be issued setting forth the terms and conditions upon which the mortgage will be insured, including special requirements applicable to the project and requiring the submission in final form within a time specified of all appropriate documents, drawings, plans, specifications, and other instruments evidencing full compliance satisfactory to the Commissioner with the provisions of this part and with such terms and conditions.

(b) Such commitment may be on a form providing for advances of mortgage money during construction and the insurance of such advances as made, or it may be on a form providing for the insurance of the mortgage after completion of the improvements.

(c) No commitment shall be valid unless signed by the Commissioner or his agent authorized for that purpose, and shall, with respect to commitments to insure advances, be effective for a stated period, not in excess of 120 days, provided that the commitment fee shall have been paid as required. A commitment may be renewed in such manner as the Commissioner may from time to time specify.

(d) The mortgagee may collect from the mortgagor the amount of the application and commitment fees provided for in this section and may charge the mortgagor an initial service charge to reimburse itself for the cost of closing the transaction, in an amount not to exceed 1½ percent of the original principal amount of the mortgage. Any additional charges shall be subject to prior approval of the Commissioner.

(e) The commitment may provide for the payment of an inspection fee in an amount not to exceed $5.00 per thousand dollars of the commitment.

ELIGIBLE MORTGAGES

§ 207.3 Mortgage provisions.

(a) *Mortgage form.* The mortgage shall be:

(1) Executed on a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated, which form shall not be changed without the prior written approval of the Commissioner.

(2) Executed by a mortgagor with the qualifications as provided in this subpart.

(3) A first lien on property that conforms with the property standards prescribed by the Commissioner.

(b) *Disbursement of the mortgage.* The mortgagee shall be obligated, as a part of the mortgage transaction, to disburse the principal amount of the mortgage, to, or for the account of the mortgagor or to his creditors for his account and with his consent.

§ 207.4 Maximum mortgage amounts.

(a) *Dollar and loan-to-value limitations.* A mortgage may involve a principal obligation not in excess of the lesser of the following:

(1) $20,000,000 if executed by a Private Mortgagor;

(2) $50,000,000 if executed by a Public Mortgagor;

(3) 90 percent of the estimated value (replacement cost if project is located in Alaska or in Guam) of the project;

(4) $2,500 per room (or $9,000 per family unit if the number of rooms in such project does not equal or exceed four per family unit) for such part of such project as may be attributable to dwelling use (excluding the cost of exterior land improvements as determined by the Commissioner);

(5) The amount of which the Commissioner estimates will be the cost of the completed improvements of the project, exclusive of public utilities, streets, and organization and legal expenses.

(b) *Increased mortgage amount—elevator type structures.* In order to compensate for the higher costs incident to cost of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitation of $2,500 per room to not to exceed $3,000 per room and the dollar amount limitation of $9,000 per family unit to not to exceed $9,400 per family unit.

(c) *Increased mortgage amount—high cost areas.* (1) In any geographical area where the Commissioner finds cost levels so require, the Commissioner may increase the dollar amount limitation by an amount not to exceed $1,250 per room without regard to the number of rooms being less than four, or more than four.

(2) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

(d) *Adjusted mortgage amount—rehabilitation projects.* A mortgage having a principal amount computed in compliance with the applicable provisions of this section, and which involves a project to be repaired or rehabilitated, shall be subject to the following additional limitations:

(1) *Property held in fee.* If the mortgagor is the fee simple owner of the project, the maximum mortgage amount shall not exceed 100 percent of the Commissioner's estimate of the cost of the proposed repairs or rehabilitation; or

(2) *Property subject to existing mortgage.* If the mortgagor owns the project subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the maximum mortgage amount shall not exceed: (i) The Commissioner's estimate of the cost of the repair or rehabilitation; plus (ii) such portion of the outstanding indebtedness as does not exceed 90 percent of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation; or

(3) *Property to be acquired.* If the project is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the maximum mortgage amount shall not exceed 90 percent of: (i) The Commissioner's estimate of the cost of the repair or rehabilitation and (ii) the actual purchase price of the land and improvements, but not in excess of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation.

(e) *Reduced mortgage amount—leaseholds.* The maximum mortgage amount based upon the limitations of this section is subject to reduction by an amount equal to the capitalized value of the ground rent in the event the mortgage is on a leasehold estate rather than on a fee simple holding.

(f) *Increased mortgage amount—operating losses.* When the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project, excluding depreciation, covered by such mortgage during the first two years following final endorsement exceed the project income, the Commissioner may, in his discretion and upon such terms and conditions as he may prescribe, permit the excess of the foregoing expenses over the project income to be added to the amount of such mortgage, and extend the coverage of the mortgage insurance thereto, and any such additional advance by the mortgagee to cover such excess shall be deemed to be part of the original face amount of the mortgage.

§ 207.5 Maturity.

The mortgage shall have a maturity satisfactory to the Commissioner, depending upon the risk involved and the general character of the project, and shall contain complete amortization or sinking-fund provisions satisfactory to the Commissioner.

§ 207.6 Payment requirements.

(a) *Method of payment.* The mortgage shall provide for monthly payments on the first day of each month on account of interest and principal and shall provide for payments in accordance with an amortization plan as agreed upon by the mortgagor, the mortgagee and the Commissioner.

(b) *Date of first payment to principal.* The Commissioner shall estimate the time necessary to complete the project and shall establish the date of the first payment to principal so that the lapse of time between completion of the project and commencement of amortization will not be longer than necessary to obtain sustaining occupancy.

§ 207.7 Maximum interest rate.

The mortgage may bear interest at such rate as may be agreed upon by the mortgagee and mortgagor, but in no case shall such interest rate be in excess of 5¼ percent. Interest shall be payable in monthly installments on the principal then outstanding.

§ 207.8 Mortgage to cover the entire property.

The mortgage shall cover the entire property included in the housing project.

§ 207.9 Covenant against liens.

The mortgage shall, except as otherwise provided in this subpart, contain a covenant against the creation by the mortgagor of liens against the property superior or inferior to the lien of the mortgage.

§ 207.10 Covenant for fire insurance.

The mortgage shall contain a covenant acceptable to the Commissioner binding the mortgagor to keep the property insured by a standard policy or policies against fire and such other hazards as the Commissioner, upon the insurance of the mortgage, may stipulate, in an amount which will comply with the coinsurance clause applicable to the location and character of the property, but not less than 80 percent of the actual cash value of the insurable improvements and equipment of the project. The initial coverage shall be in an amount estimated by the Commissioner at the time of completion of the entire project or units thereof. The policies evidencing such insurance shall have attached thereto a standard mortgagee clause making loss payable to the mortgagee and the Commissioner, as interests may appear.

§ 207.11 Soundness of project.

No mortgage shall be accepted for insurance unless the Commissioner finds that the property or project with respect to which the mortgage is executed is economically sound, except that as to

mortgages covering property located in Alaska or in Guam, or in Hawaii, no mortgage shall be accepted for insurance unless the Commissioner finds that the property or project is an acceptable risk giving consideration to the acute housing shortage in Alaska, or in Guam, or in Hawaii.

§ 207.12 Accumulation of accruals.

(a) The mortgage shall provide for payments by the mortgagor to the mortgagee on each interest payment date of an amount sufficient to accumulate in the hands of the mortgagee one payment period prior to its due date, the next annual mortgage insurance premium payable by the mortgagee to the Commissioner. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize the ground rents, if any, and the estimated amount of all taxes, water rates and special assessments, if any, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become delinquent. The mortgage shall further provide that such payments shall be held by the mortgagee, for the purpose of paying such ground rents, taxes, water rates and assessments, and insurance premiums, before the same become delinquent. The mortgage must also make provision for adjustments, in case the estimated amount of such taxes, water rates and assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor.

§ 207.13 Application of payments.

(a) The mortgage shall provide that all monthly payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate amount thereof shall be paid by the mortgagor upon each monthly payment date in a single payment. The mortgagee shall apply the same to the following items in the order set forth:

(1) Premium charges under the contract of insurance;

(2) Ground rents, taxes, special assessments and fire and other hazard insurance premiums;

(3) Interest on the mortgage;

(4) Amortization of the principal of the mortgage.

(b) Any deficiency in the amount of any such aggregate monthly payment shall constitute an event of default. The mortgage shall further provide for a grace period of 30 days, within which time the default must be made good.

§ 207.14 Prepayment privilege; prepayment and late charges.

(a) *Prepayment privilege.* The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment date after giving to the mortgagee 30 days' notice in writing in advance of its intention to so prepay.

(b) *Prepayment charge.* The mortgage may contain a provision for such additional charge in the event of prepayment of principal as may be agreed upon between the mortgagor and mortgagee. However, the mortgagor shall be permitted to prepay up to 15 percent of the original principal amount of the mortgage in any one calendar year without any such additional charge. Any reduction in the original principal amount of the mortgage resulting from the certification of cost requirements of this part shall not be construed as a prepayment of the mortgage.

(c) *Late charge.* The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed 2 cents for each dollar of each payment to interest or principal more than 15 days in arrears, to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

§ 207.15 Issuance of bonds.

In the event that bonds are to be issued as a part of the insured mortgage transaction, all arrangements with respect to the issuance and sale of such bonds shall be subject to approval by the Commissioner.

§ 207.16 Mortgage covenant regarding racial restrictions and use of property.

(a) The mortgage shall contain a covenant by the mortgagor that until the mortgage has been paid in full, or the contract of insurance otherwise terminated, he will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the mortgaged property on the basis of race, color, or creed. Such covenant shall be binding upon the mortgagor and his assigns and shall provide that upon violation thereof, the mortgagee may, at its option, declare the unpaid balance of the mortgage immediately due and payable.

(b) The mortgage shall contain a covenant prohibiting the use of the property covered thereby for any purpose other than that for which it was intended at the date the mortgage was executed.

ELIGIBLE MORTGAGORS

§ 207.17 Classification.

In order to be eligible as a mortgagor under this subpart the applicant must be:

(a) *Private mortgagors.* Any mortgagor approved by the Commissioner, which until the termination of all obligations of the Commissioner under the insurance contract and during such further period of time as the Commissioner shall be the owner, holder, or reinsurer of the mortgage, is regulated or restricted by the Commissioner as to rents or sales, charges, capital structure, rate of return, and methods of operation.

(b) *Public mortgagors.* A federal or state instrumentality, a municipal corporate instrumentality of one or more states, or a limited dividend or redevelopment or housing corporation formed under and restricted by federal or state laws or regulations of a state banking or insurance department as to rents, charges, capital structure, rate of return, or methods of operation.

SUPERVISION OF MORTGAGORS

§ 207.18 In general.

(a) In the case of an eligible mortgagor which is regulated or restricted for the purposes and in the manner provided in § 207.17(b), or in the case in which the mortgagor or mortgagee is the Alaska Housing Authority, or the Government of Guam or Hawaii or any agency or instrumentality thereof, liens inferior to the lien of the insured mortgage may be allowed against properties of such mortgagors: *Provided*, That the mortgagor in any such case, must have initial funds which may be considered in lieu of the equity required of other mortgagors, and such funds (which may be in the form of Government loans, grants, or subsidies or in other form) if sufficient in amount, will be considered satisfactory provided they do not create a lien against the property prior to that of the insured mortgage.

(b) In all other cases a mortgagor must certify at final endorsement of the loan for insurance that the property covered by the mortgage is free and clear of all liens other than such mortgage, and that there will not be outstanding any other unpaid obligation contracted in connection with the mortgage transaction, the purchase of the mortgaged property, or the construction of the project, except such obligations as may be approved by the Commissioner as to terms, form and amount.

(c) In the case of a private corporation, the Commissioner's regulations or restrictions will be set forth in its certificate of incorporation or charter under which such mortgagor is created, and will be made effective through the issuance of certain shares of special stock, which stock will acquire majority voting rights in the event of default under the mortgage or violation of a provision of the charter. Such special stock or interest issued to the Commissioner, his nominee or nominees and/or the Federal Housing Administration shall be in sufficient amount to constitute under the laws of the particular state a valid special class of stock or interest and shall be issued in consideration of the payment by the Commissioner of not exceeding in the aggregate $100. Such stock shall be represented by a certificate or certificates issued in the name of the Commissioner, and/or in the name of his nominee or nominees, and/or in the name of the Federal Housing Administration, as the Commissioner shall require. In the case of a private association or trust entity, or whenever, for any reason satisfactory to the Commissioner, such regulations or restrictions are not feasible as to a particular mortgagor through the issuance of shares of special stock, such regulations or restrictions shall be effected by means of a regulatory agreement and/or other contractual documents between the Commissioner and the mortgagor in such form and in

such manner as shall be satisfactory to the Commissioner. Upon the termina-

(ii) All tenant security deposits held. No distributions of any kind may be

ing jurisdiction over the territory

such manner as shall be satisfactory to the Commissioner. Upon the termination of all obligations of the Commissioner under his contract of mortgage insurance, or any succeeding contract or agreement covering the mortgage obligation, all regulations and restrictions of the mortgagor shall cease, the shares of special stock shall be surrendered by the Commissioner upon reimbursement of his payments therefor, plus accrued dividends, if any, thereon, and any regulatory agreement or contract shall terminate.

§ 207.19 Required supervision of private mortgagors.

The following are the items which will be regulated or restricted, except in the case of mortgagors of the character described in § 207.17(b):

(a) *Capital structure.* (1) The number of shares of capital stock, in the case of a corporation, may be issued in such amounts and form as may be agreed upon by the sponsors and the Commissioner prior to the endorsement of the mortgage for insurance; and

(2) In the case of a trust entity beneficial certificates of interest may be issued in such amounts and form as may be agreed upon by the mortgagor and the Commissioner.

(b) *Rate of return.* Dividends or other distributions as defined in the Charter, Trust Agreement, or Regulatory Agreement, may be declared or made only as of and after the end of an annual or semiannual fiscal period. No dividends or other distributions shall be declared or made except out of surplus cash legally available and remaining after:

(1) The payment of:

(i) All sums due or currently required to be paid under the terms of any mortgage or note insured or held by the Commissioner;

(ii) All amounts required to be deposited in the Reserve Fund for Replacements;

(iii) All obligations of the project other than the mortgage insured or held by the Commissioner unless funds for payment are set aside or deferment of payment has been approved by the Commissioner.

(2) The segregation of:

(i) An amount equal to the aggregate of all special funds required to be maintained by the project;

(ii) All tenant security deposits held. No distributions of any kind may be made from borrowed funds.

(c) *Requirements incident to insurance of advances.* (1) The mortgagor shall deposit with the mortgagee or, in a depository satisfactory to the mortgagee and under control of the mortgagee an amount equivalent to not less than two percent of the original principal amount of the mortgage, for the purpose of meeting the cost of equipping and renting the project subsequent to completion of construction of the entire project or units thereof and, during the course of construction, for allocation by the mortgagee to the accruals for taxes, mortgage insurance premiums, hazard insurance premiums and assessments required by the terms of the mortgage.

(2) The mortgagor must establish in a manner satisfactory to the Commissioner that, in addition to the proceeds of the insured mortgage, the mortgagor has funds sufficient to assure completion of construction of the project and to pay all carrying charges, financing and organization expenses incidental to the construction of the project. Unless other provisions acceptable to the Commissioner are made, such funds shall be deposited with and held by the mortgagee in a special account or by an acceptable depository designated by the mortgagee under an appropriate agreement approved by the Commissioner which will require all such funds to be expended for work and material on the physical improvements and for other charges and expenses to be paid when due prior to the advance of any mortgage money.

(3) The Commissioner may require the deposit with the mortgagee or with an acceptable trustee or escrow agent designated by the mortgagee, under an appropriate agreement, of such cash as may be required for the completion of off-site public utilities and streets.

(4) The mortgagor and the mortgagee shall, prior to the insurance of the mortgage, execute an agreement acceptable to the Commissioner providing for the manner and conditions under which advances (if any) during construction are to be made by the mortgagee and approved for insurance by the Commissioner. Such agreement shall require the mortgagee to notify the Commissioner, through the insuring office having jurisdiction over the territory in which the property is situated, in writing, on an application form prescribed by the Commissioner, of the proposed date and the amount of the advance to be made, and the Commissioner shall deliver to the mortgagee within a reasonable time from the date of such notice a certificate executed on behalf of the Commissioner on a form prescribed by him setting forth the amount approved for insurance or advising the mortgagee of the Commissioner's nonapproval and setting forth the reasons therefor. Such agreement shall be set forth on a form prescribed by the Commissioner; shall contain such additional terms, conditions, and provisions as the Commissioner shall in the particular case prescribe or approve, and when properly executed by the Commissioner and the mortgagee, shall constitute a part of the mortgage insurance contract.

(5) The mortgagor shall furnish assurance of completion of the project in a form and amount approved by the Commissioner, as follows:

(i) A bond of a surety company with the mortgagor and mortgagee as joint obligees in the penal sum of at least 10 percent of the estimated cost of construction of the project; or

(ii) An escrow deposit under an agreement with the mortgagee, or with a depository satisfactory to the mortgagee and the Commissioner, of cash, or of securities of, or fully guaranteed as to principal and interest by, the United States of America, in an amount at least equal to 10 percent of the estimated cost of construction of the project.

(6) An irrevocable letter of credit in form and substance acceptable to the Commissioner and the mortgagee and issued by an institution satisfactory to them may be substituted for any cash deposit required by this paragraph.

(d) *Labor standards and prevailing wage requirements.* (1) Any contract or subcontract executed for the performance of construction of the project shall comply with all applicable Labor Standards and provisions of the Regulations of the Secretary of Labor, issued May 9, 1951 (29 CFR 5.1–5.12).

(2) No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established and maintained by the Comptroller General, pursuant to § 5.6 (b) of the Regulations of the Secretary of Labor, issued May 9, 1951 (29 CFR 5.6 (b)).

(3) No advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed on the ineligible list established by the Comptroller General, pursuant to the provisions of the Secretary of Labor, issued May 9, 1951 (29 CFR 5.6 (b)).

(4) No advance under any mortgage shall be eligible for insurance unless there is filed with the application for such advance a certificate or certificates in the form required by the Commissioner, supported by such other information as the Commissioner may prescribe, certifying that the laborers and mechanics employed in the construction of the dwelling or dwellings, or housing project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor prior to the beginning of construction and after the date of filing of the application for insurance.

(5) Compliance with the provisions of this subsection shall be evidenced at such time and in such manner as the Commissioner may prescribe.

(e) *Rents and charges.* No charge shall be made by the mortgagor for the accommodations, facilities or services offered by the project in excess of those approved by the Commissioner in writing prior to the opening of the project for rental. In approving such charges and in passing upon applications for changes, consideration will be given to the following and similar factors:

(1) Rental income necessary to maintain the economic soundness of the project.

(2) Rental income necessary to provide reasonable return on the investment

consistent with providing reasonable rentals to tenants.

(f) *Methods of operation.*

(1) [Reserved]

(2) The mortgagor shall maintain its project, the grounds, buildings, and equipment appurtenant thereto, in good repair and will promptly complete necessary repairs and maintenance as required by the Commissioner.

(3) A Fund for Replacements shall be accumulated and maintained with the mortgagee and the amount and type of such Fund and the conditions under which it shall be accumulated, replenished and used, shall be specified in the charter, trust agreement, or regulatory agreement.

(4) The mortgagor, its property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and papers shall be subject to inspection and examination by the Commissioner or his duly authorized agent at all reasonable times.

(5) The mortgagor shall execute and deliver to the Commissioner a certificate that the books and accounts of the mortgagor will be established and maintained in a manner satisfactory to the Commissioner on the date the certificate is executed. Such certificate shall be to the effect that so long as the mortgage is insured or held by the Commissioner the mortgagor's books and accounts will be kept in accordance with the requirements of the Commissioner; will be in such form as to permit a speedy and effective audit and as may otherwise be prescribed by the Commissioner; will be maintained for such periods of time as may be prescribed by the Commissioner, and will be available to the Commissioner and to the Comptroller General of the United States for such examination and audits as they may desire to make. The mortgagor shall file with the Commissioner and the mortgagee the following reports verified by the signature of such officers of the mortgagor as the Commissioner may designate and in such form as prescribed by the Commissioner:

(i) Monthly occupancy reports, when required by the Commissioner;

(ii) [Reserved]

(iii) Complete annual financial reports based upon examinations of the books and records of the mortgagor, prepared in accordance with the requirements of the Commissioner, certified to by an officer of the mortgagor and, when required by the Commissioner, prepared and certified by a Certified Public Accountant (or other person acceptable to the Commissioner), such reports to be submitted within sixty (60) days after the end of each fiscal year.

(iv) Specific answers to questions upon which information is desired from time to time relative to the actual cost of construction, the disposition of mortgage funds, the operation and condition of the property and the status of the insured mortgage;

(v) Properly certified copies of minutes of meetings of directors, officers, stockholders, shareholders, or beneficiaries.

(g) *Mortgagor's equity investment.* Unless it can be established to the satisfaction of the Commissioner, prior to the final endorsement of the mortgage for insurance, that the mortgagor has an investment in the project, represented by cash expenditures, in an amount equal to 3 percent of the total cost of the project as certified by the mortgagor and approved by the Commissioner, there shall be deposited in a special fund an amount equal to the difference between such 3 percent and the amount of any such investment for necessary expenses incident to the completion of the project. Disbursements from any such fund, prior to three years from the date of the final or initial-final endorsement of the mortgage for insurance, may be made only with the prior written approval of the Commissioner.

(h) *Advance amortization.* If prior to the beginning of amortization net income, as defined by the Commissioner, is received as the result of the rental of the mortgaged property, such net income, to the extent determined by the Commissioner, shall be applied either to advance amortization or to offset the cost of project capital improvements which are approved by the Commissioner.

§ 207.20 Occupancy requirements.

(a) *Family with children.* The mortgagor shall certify under oath to the Commissioner that:

(1) In selecting tenants for the project covered by the mortgage, the mortgagor will not discriminate against any family by reason of the fact that there are children in the family; and

(2) The mortgagor will not sell the project while the mortgage insurance is in effect unless the purchaser also so certifies.

(b) *Transient or hotel purposes.* The mortgagor shall certify under oath that, so long as the mortgage is insured by the Commissioner, the mortgagor will not rent, permit the rental or permit the offering for rental of the housing, or any part thereof, covered by such mortgage for transient or hotel purposes. For the purpose of this certificate, the term rental for transient or hotel purposes shall mean (1) rental for any period less than 30 days, or (2) any rental, if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linens, and bellboy service.

§ 207.21 Racial discrimination prohibited.

Any contract or subcontract executed for the performance of construction of the project shall contain the provision that there shall be no discrimination against any employee, or applicant for employment, because of race, color, creed, or national origin.

ELIGIBLE MORTGAGEES

§ 207.22 Qualification of lenders.

The provisions of §§ 203.1 to 203.4 and 203.6 to 203.9 of this chapter shall govern the eligibility, qualifications and requirements of mortgages under this subpart.

PROPERTY REQUIREMENTS

§ 207.23 Eligibility of property.

(a) A mortgage to be eligible for insurance shall be on real estate held:

(1) In fee simple; or

(2) On the interest of the lessee under a lease for not less than ninety-nine years which is renewable; or

(3) Under a lease having a period of not less than seventy-five years to run from the date the mortgage is executed; or

(4) Under a lease executed by a governmental agency, an Indian or an Indian tribe for the maximum term consistent with the legal authority for the execution of such lease, provided that the term of any such lease shall run for a period of not less than fifty years from the date the mortgage is executed.

(b) The property constituting security for the mortgage must be held by an eligible mortgagor as herein defined and must at the time the mortgage is insured be free and clear of all liens other than that of such mortgage.

§ 207.24 Development of property.

(a) At the time the mortgage is insured the mortgagor shall be obligated to construct and complete new housing accommodations on the mortgaged property, designed principally for residential use, conforming to standards satisfactory to the Commissioner, and consisting of not less than eight rental dwelling units on one site and may be detached, semi-detached, or row houses, or multi-family structures; except that the Commissioner may insure a mortgage on a completed project constructed pursuant to a Commitment to Insure upon Completion, or

(b) At the time the mortgage is insured there shall be located on the mortgaged property a building or buildings, which, upon completion of proposed improvements, shall constitute a single project and provide housing accommodations designed principally for residential use, conforming to standards satisfactory to the Commissioner, and containing at least eight rental dwelling units so located in relation to one another as to effect a substantial improvement of housing standards and conditions in the neighborhood; and in either case such dwelling and other improvement, if any, must not violate any material zoning or deed restrictions applicable to the project site, and must comply with all applicable building and other governmental regulations; and any project may include such commercial and community facilities as the Commissioner deems adequate to serve the occupants.

ADJUSTMENT OF MORTGAGE AMOUNT

§ 207.25 Certification of cost requirements.

Prior to initial endorsement of the mortgage for insurance, the mortgagor, the mortgagee, and the Commissioner shall enter into an agreement in form

and content satisfactory to the Commissioner for the purpose of precluding any excess of mortgage proceeds over statutory limitations. Under this agreement the mortgagor shall disclose its relationship with the builder, including any collateral agreement, and agree to enter into a construction contract the terms of which shall depend on whether or not there exists an identity of interest between the mortgagor and the builder. The agreement shall require that upon completion of all physical improvements on the mortgaged property the mortgagor must execute a certificate of actual costs. The agreement shall further require that any excess of mortgage proceeds over statutory limitations based on actual cost shall be applied to reduction of the outstanding balance of the principal of the mortgage.

§ 207.26 Form of contract.

The form of contract between the mortgagor and builder shall be determined in acordance with the following:

(a) If it is established to the satisfaction of the Commissioner that neither the mortgagor nor any of the officers, directors, or stockholders of the mortgagor have any interest in the builder or contractor, there may be used a lump sum form of contract providing for payment of a specified amount.

(b) If it is determined by the Commissioner that the mortgagor, its officers, directors or stockholders have any interest, financial or otherwise, in the builder or contractor, the form of contract shall provide for payment of the actual cost of construction, not to exceed an upset price and may provide for payment of a builder's fixed fee in addition thereto. The builder's fixed fee shall not exceed a reasonable allowance therefor as established by the Commissioner, in accordance with customary practices in the area.

(c) If it is determined by the Commissioner that the mortgagor, its officers, directors or stockholders have any interest, financial or otherwise, in any subcontractor or material supplier, the mortgagor must certify in a form prescribed by the Commissioner prior to final endorsement of the mortgage for insurance that the amounts paid to such subcontractor or material supplier were not more than the rate prevailing in the locality for similar type labor and materials.

(Sec. 207, 52 Stat. 16, as amended; 12 U. S. C. 1713)

§ 207.27 Certificate of actual cost.

The mortgagor's certificate of actual cost shall be submitted upon completion of physical improvements to the satisfaction of the Commissioner and prior to final endorsement. Its content and requirements regarding verification are as follows:

(a) When the work has been completed under a contract as described in § 207.26(a), the mortgagor's certification shall be on the form prescribed therefor by the Commissioner and shall indicate the amount actually paid under the construction contract after deduction of any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor corporation, or to any of its officers, directors or stockholders; plus the cost to the mortgagor of architects' fees, off-site public utilities and streets not included in the general contract, organizational and legal work and other items of expense approved by the Commissioner. For verification of these amounts the mortgagor shall keep and maintain adequate records of all costs of any construction or other cost items not representing work under the general contract and shall make available for examination such records including any collateral agreements upon request by the Commissioner.

(b) When the work has been completed under a contract as described in § 207.26(b), the mortgagor's certification shall be on the form prescribed therefor by the Commissioner and shall indicate all amounts as required in paragraph (a) of this section, and such allocations of general overhead items as are acceptable to the Commissioner, plus a reasonable allowance for the builder's profit as established by the Commissioner. This form of certification shall be accompanied by a certification by the builder on the form prescribed therefor by the Commissioner, indicating all actual costs paid for labor, materials, and subcontract work under the general contract exclusive of the builder's fee and less any kickbacks, rebates, trade discounts, or other similar payments to the builder or mortgagor corporation or any of its officers, directors, or stockholders. The mortgagor shall keep and make available records as required in paragraph (a) of this section and shall in turn require the builder to keep available similar records.

(c) The certificates of actual cost shall be supported by a certificate as to accuracy by an independent Certified Public Accountant or independent public accountant, which shall include a statement that the accounts, records and supporting documents have been examined in accordance with generally accepted auditing standards to the extent deemed necessary to verify the actual costs.

§ 207.28 Adjustment resulting from cost certification.

Upon receipt of the mortgagor's certification of actual cost there shall be added to the total amount thereof the Commissioner's estimate of the fair market value of any land included in the mortgage security and owned by the mortgagor in fee such value being prior to the contruction of the improvements. In the event the land is held under a leasehold or other interest less than a fee, the cost, if any, of acquiring the leasehold or other interest is considered an allowable expense which may be added to actual cost provided that in no event such amount is in excess of the fair market value of such leasehold or other interest exclusive of proposed improvements. If the principal obligation of the mortgage exceeds the applicable statutory percentage of this total amount, the mortgage shall be reduced by the amount of such excess prior to final endorsement for insurance.

§ 207.29 Rehabilitation projects.

In the event the mortgage is to finance repair or rehabilitation, the mortgagor's actual cost of such repair or rehabilitation may include the items of expense permitted for new construction in accordance with either paragraph (a) or paragraph (b) of § 207.27 and the applicable cost certification procedure described therein will be required; provided such mortgage shall be subject to the following limitations:

(a) *Property held in fee.* If no part of the proceeds is to be used to finance the purchase of the land or structures involved, the mortgage shall be reduced to an amount not to exceed 100 percent of the approved cost of the completed repair or rehabilitation.

(b) *Property subject to existing mortgage.* If the insured mortgage is to include the cost of refinancing an existing mortgage acceptable to the Commissioner, the amount of the existing mortgage or 90 percent of the Commissioner's estimate of the fair market value of land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds the total amount thus obtained, the mortgage shall be reduced by the amount of such excess, prior to final endorsement for insurance.

(c) *Property to be acquired.* If the mortgage is to include the cost of land and improvements, and the purchase price thereof is to be financed with part of the mortgage proceeds, the purchase price, or the Commissioner's estimate of the fair market value of land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds the applicable statutory percentage of the total amount thus obtained, the mortgage shall be reduced by the amount of such excess, prior to final endorsement for insurance.

§ 207.30 Requisites of agreement and certification.

(a) Any agreement, undertaking, statement or certification required by § 207.27 shall specifically state that it has been made, presented, and delivered for the purpose of influencing an official action of the Federal Housing Administration, and of the Federal Housing Commissioner, and may be relied upon by the Commissioner as a true statement of the facts contained therein.

(b) Upon the Commissioner's approval of the mortgagor's certification as required by § 207.27 such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor.

OTHER ELIGIBLE MORTGAGES

§ 207.31 Eligibility of miscellaneous type mortgages.

(a) A mortgage covering five or more rental units and which meets the requirements of this subpart, except as modified by this section shall be eligible for insurance under this subpart.

(b) The mortgage may be accepted for insurance if—

(1) Executed in connection with the sale by the Government, or any agency or official thereof, of any housing acquired or constructed under Public Law 849, Seventy-sixth Congress, as amended; Public Law 781, Seventy-sixth Congress, as amended; or Public Laws 9, 73, or 353, Seventy-seventh Congress, as amended (including any additional property acquired, held, or constructed in connection with such housing or to serve the inhabitants thereof); or

(2) Executed in connection with the sale by the Public Housing Administration, or by any public housing agency with the approval of the said Administration, of any housing including any additional property acquired, held, or constructed in connection with such housing or to serve the inhabitants thereof) owned or financially assisted pursuant to the provisions of Public Law 671, Seventy-sixth Congress; or

(3) Executed in connection with the sale by the Government, or any agency or official thereof, or any of the so-called Greenbelt towns, or parts thereof, including projects, or parts thereof, known as Greenhills, Ohio; Greenbelt, Maryland; and Greendale, Wisconsin, developed under the Emergency Relief Appropriation Act of 1935; or of any of the village properties or employee's housing under the jurisdiction of the Tennessee Valley Authority; or of any housing under the jurisdiction of the Department of the Interior located within the town area of Coulee Dam, Washington, acquired by the United States for the construction, operation, and maintenance of Grand Coulee Dam and its appurtenant works or of any permanent housing under the jurisdiction of the Department of the Interior constructed under the Boulder Canyon Project Act of December 21, 1928, as amended and supplemented, located within the Boulder City municipal area; or

(4) Executed in connection with the sale by the Government, or any agency or official thereof, of any housing (including any property acquired, held, or constructed in connection therewith or to serve the inhabitants thereof) pursuant to the Atomic Energy Community Act of 1955, as amended: *Provided*, That such insurance shall be issued without regard to any preferences or priorities except those prescribed by the National Housing Act or the Atomic Energy Community Act of 1955, as amended; or

(5) Executed in connection with the sale by a State or municipality, or any agency, instrumentality, or political subdivision of either, of a project consisting of any permanent housing (including any property acquired, held or constructed in connection therewith or to serve the inhabitants thereof), constructed by or on behalf of such State, municipality, agency, instrumentality or political subdivision, for the occupancy of veterans (as defined in § 203.12) their families and others: *Provided*, That in no case may the principal obligation of a mortgage referred to in this subparagraph exceed 90 percent of the appraised value of the mortgaged property; or

(6) Executed in connection with the first resale, within two years from the date of its acquisition from the Government, of any portion of a project or property of the character described in subparagraphs (1), (2), (3), and (4) of this paragraph.

(c) For the purposes of this section, an eligible mortgagor is defined as a person or legal entity acceptable to the Commissioner. Such a mortgagor may, in the discretion of the Commissioner, be (1) uncontrolled or (2) controlled in such degree and manner as the Commissioner may find desirable under the circumstances.

§ 207.32 Eligibility of refinancing transactions.

Nothwithstanding any other provisions of this subpart, a mortgage bearing interest as provided in § 207.7 given to refinance a mortgage insured under sections 220, 221, 608 or 908 of the National Housing Act shall be eligible for insurance under this section, if the principal amount of such new mortgage does not exceed the original principal amount and the term does not exceed the unexpired term of such existing mortgage; except that in any case in which the Commissioner determines that the insurance of a mortgage for an additional term will inure to the benefit of the applicable insurance fund taking into consideration the outstanding insurance liability under the existing insured mortgage, the new mortgage may have a term of not more than 12 years in excess of the unexpired term of the existing insured mortgage.

§ 207.33 Eligibility of mortgages on trailer courts or parks for trailer coach mobile dwellings.

(a) All of the provisions of this subpart shall apply to insurance of mortgages on trailer courts or parks, except as provided in this section. All references in this subpart to housing for rent or sale shall mean the rental of spaces for the accommodation of trailers or mobile homes, and such appurtenances thereto as may have been approved by the Commissioner.

(b) A mortgage on a trailer court or park may involve a principal obligation in an amount not to exceed the lesser of the following:

(1) $500,000;

(2) $1,800 per space, as defined by the Commissioner;

(3) 75 percent of the estimated value of the property after the improvements are completed.

(c) A mortgage on a trailer court or park is not subject to the provisions of § 207.4.

(d) No mortgage on a leasehold estate shall be eligible for insurance under this section.

(e) A mortgage on a trailer court or park shall have a maturity satisfactory to the Commissioner not to exceed 15 years from the date of insurance.

(f) [Reserved]

(g) [Reserved]

(h) At the time a mortgage is insured on a trailer court or park, the mortgagor shall have constructed and completed, or shall have rehabilitated and completed, pursuant to a commitment to insure upon completion, or shall be obligated to construct and complete, or to rehabilitate and complete pursuant to a commitment to insure advances, such court or park, consisting of a single project of not less than fifty spaces on one site, designed principally for rental use for trailers or mobile homes, and conforming to standards, specifications, plans and requirements satisfactory to the Commissioner.

(i) The references in §§ 207.25 to 207.29 to "statutory limitation" and "statutory percentage" shall mean the ratio of loan-to-value limitation set forth in paragraph (b) (3) of this section.

(j) [Reserved]

§ 207.34 Reinsurance of Commissioner-held mortgages.

Notwithstanding any other provisions of this subpart, the Commissioner may insure any mortgage assigned to him in connection with payment under a contract of mortgage insurance, or executed in connection with a sale by him of any property acquired under Title II, Title VI, Title VII, Title VIII, or Title IX of the National Housing Act without regard to any limitation upon eligibility contained in this subpart.

TITLE

§ 207.35 Eligibility of title.

In order for the mortgaged property to be eligible for insurance, the Commissioner must determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for record. The title evidence will be examined by the Commissioner and the original endorsement of the credit instrument for insurance will be evidence of its acceptability.

§ 207.36 Title evidence.

Upon insurance of the mortgage, the mortgagee, without expense to the Commissioner, shall furnish to the Commissioner a survey satisfactory to him and a policy of title insurance, as provided in paragraph (a) of this section, or, if the mortgagee is unable to furnish such policy for reasons satisfactory to the Commissioner, the mortgagee, without expense to the Commissioner, shall furnish such evidence of title as provided in paragraphs (b), (c) or (d) of this section, as the Commissioner may require.

(a) A policy of title insurance with respect to such mortgage, issued by a company satisfactory to the Commissioner. Such policy shall comply with the "L. I. C. Standard Mortgagee Form," or the "A. T. A. Standard Mortgagee Form," or such other form as may be approved by the Commissioner; shall be payable to the mortgagee and the Commissioner as their respective interests may appear; and shall become an owner's policy, running to the mortgagee as owner upon the acquisition of the property by the mortgagee in extinguishment of a debt through foreclosure or by other means, and to the Commissioner as owner upon the acquisition of the property by him pursuant to the mortgage insurance contract.

(b) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

(c) A Torrens or similar title certificate.

(d) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or Territory thereof.

EFFECTIVE DATE

§ 207.37 Effective date.

The provisions of this subpart shall be effective as to all mortgages with respect to which a commitment to insure shall be issued on or after the date hereof.

Subpart B—Contract Rights and Obligations

§ 207.251 Definitions.

As used in this subpart:

(a) The term "Commissioner" means the Federal Housing Commissioner.

(b) The term "act" means the National Housing Act, as amended.

(c) The term "mortgage" means such a first lien upon real estate and other property as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the State, district or territory in which the real estate is located, together with the credit instrument or instruments, if any, secured thereby.

(d) The term "insured mortgage" means a mortgage which has been insured by the endorsement of the credit instrument by the Commissioner, or his duly authorized representative.

(e) The term "contract of insurance" means the agreement evidenced by such endorsement and includes the terms, conditions and provisions of this part and of the National Housing Act.

(f) The term "mortgagor" means the original borrower under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

(g) The term "mortgagee" means the original lender under a mortgage its successors and such of its assigns as are approved by the Commissioner, and includes the holders of the credit instruments issued under a trust indenture, mortgage or deed of trust pursuant to which such holders act by and through a trustee therein named.

PREMIUMS

§ 207.252 First, second and third premiums.

The mortgagee, upon the initial endorsement of the mortgage for insurance, shall pay to the Commissioner a first mortgage insurance premium equal to one-half of one percent of the original face amount of the mortgage.

(a) If the date of the first principal payment is more than one year following the date of such initial insurance endorsement, the mortgagee, upon the anniversary of such insurance date, shall pay a second premium equal to one-half of one percent of the original face amount of the mortgage. On the date of the first principal payment, the mortgagee shall pay a third premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said three premiums shall equal the sum of (1) one percent of the average outstanding principal obligation of the mortgage for the year following the date of initial insurance endorsement and (2) one-half of one percent per annum of the average outstanding principal obligation of the mortgage for the period from the first anniversary of the date of initial insurance endorsement to one year following the date of the first principal payment.

(b) If the date of the first principal payment is one year, or less than one year following the date of such initial insurance endorsement, the mortgagee, upon such first principal payment date, shall pay a second premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of (1) one percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of initial insurance endorsement to the date of first principal payment and (2) one-half of one percent of the average outstanding principal obligation of the mortgage for the year following the date of the first principal payment.

(c) Where the credit instrument is initially and finally endorsed for insurance pursuant to a Commitment to Insure Upon Completion, the mortgagee on the date of the first principal payment shall pay a second premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the year following such first principal payment date which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of one-half of one percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of the insurance endorsement to one year following the date of the first principal payment.

(d) Until the mortgage is paid in full, or until an application for debentures is

received by the Commissioner or until the contract of insurance is otherwise terminated with the consent of the Commissioner, the mortgagee, on each anniversary of the date of the first principal payment shall pay an annual mortgage insurance premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the year following the date on which such premium becomes payable.

(e) The premiums payable on and after the date of the first principal payment shall be calculated in accordance with the amortization provisions without taking into account delinquent payments or prepayments.

(f) Premiums shall be payable in cash or in debentures issued by the Commissioner against the Housing Insurance Fund under Title II of the National Housing Act at par plus accrued interest. All premiums are payable in advance and no refund can be made of any portion thereof except as hereinafter provided in this subpart.

§ 207.253 Adjusted premium and termination charges.

(a) All rights under the insurance contract and all obligations to pay future insurance premiums shall terminate on the following conditions:

(1) Payment to the Commissioner of an adjusted premium or termination charge computed as follows:

(i) Two percent of the original face amount of the mortgage when the mortgage is prepaid in full or the contract of insurance is voluntarily terminated within five years from the date of the initial endorsement for insurance; or

(ii) One percent of the original face amount of the mortgage when the mortgage is prepaid in full or the contract of insurance is voluntarily terminated after five years from the date of initial endorsement for insurance; or

(iii) The relevant percentage as set forth in subdivision (i) or (ii) of this paragraph applied to the difference between the original face amount of the mortgage and the appregate face amount of a new mortgage or mortgages, if at the time of prepayment:

(*a*) The insured mortgage is paid in full with or from the proceeds of a new insured mortgage, or mortgages having an aggregate amount less than the original principal amount of the mortgage on the same property.

(*b*) The Commissioner has accepted an adjusted premium charge under an agreement providing that if new insured mortgages are placed on part or all of the property, within a period of time not to exceed one year from the date of prepayment, the adjusted premium charge previously collected will be refunded in whole or in part. In the event of the acceptance of such agreement the refund, if any, shall be computed only after the termination of the agreement or after the sale of all property or properties, whichever occurs first, and no refund shall be made prior to such computation.

(2) Notice within 30 days after prepayment in full or of a written agreement consented to by the Commissioner between the mortgagor and mortgagee voluntarily terminating the contract of insurance and

(3) Such further evidence of prepayment in full or voluntary termination and cancellation of insurance as the Commissioner may require.

(b) In no event shall the adjusted premium charge or termination charge exceed the aggregate amount of premium charges which would have been payable if the mortgage had continued to be insured until maturity.

(c) No adjusted premium charge shall be due the Commissioner in the following cases:

(1) where, at the time of such prepayment, there is placed on the mortgaged property a new insured mortgage or mortgages for an amount equal to or greater than the original principal amount of the prepaid mortgage; or

(2) where the final maturity specified in the mortgage is accelerated solely by reason of partial prepayments made by the mortgagor which do not exceed in any one calendar year 15 percent of the original face amount of the mortgage; or

(3) Where the final maturity specified in the mortgage is accelerated solely by reason of payments to principal to compensate for damage to the mortgaged property, including loss by condemnation or conveyance in lieu of condemnation, or a release of a part of such property, if approved by the Commissioner; or

(4) where payment in full is made of a delinquent mortgage on which foreclosure proceedings have been commenced, or for the purpose of avoiding foreclosure, if the Commissioner, in his discretion, agrees in writing to waive the payment thereof; or

(5) where, at the time of such prepayment, there is placed on the property a new insured mortgage or mortgages less than the original principal amount of the prepaid mortgage: *Provided*, That the Commissioner finds that the collection of such charge would be inequitable under the particular circumstances of the transaction.

(d) At the time of prepayment or voluntary termination of the mortgage insurance contract, the Commissioner shall refund to the mortgagee for the account of the mortgagor an amount equal to the pro rata portion of the current annual mortgage insurance premium theretofore paid, which is applicable to the portion of the year subsequent to the date of (1) prepayment, or (2) receipt by the Commissioner of a request for voluntary termination.

(e) At the time of prepayment, the Commissioner will refund to the mortgagee for the account of the mortgagor an amount equal to the pro rata portion of the current annual mortgage insurance premium theretofore paid, which is applicable to the portion of the year subsequent to such prepayment.

INSURANCE ENDORSEMENT

§ 207.254 Form of endorsement.

(a) *Initial endorsement.* Upon compliance with the terms and conditions of a commitment, the Commissioner shall make an initial endorsement of the mortgage evidencing insurance by an appropriate panel or endorsement placed on the original credit instrument which will identify the section of the Act and the regulations under which the mortgage is insured and the date of insurance.

(b) *Final endorsement.* After all advances under the mortgage have been made, the Commissioner shall, upon presentation of the original credit instrument, make a final endorsement of the original credit instrument which shall state the total of all advances approved for insurance by the Commissioner and show the date of such approval.

(c) *Effect of endorsement.* From the date of initial endorsement the Commissioner and mortgagee shall be bound by the provisions of this subpart with the same force and effect as if a separate contract had been executed including the provisions of this subpart and the Act.

RIGHTS AND DUTIES OF MORTGAGEE UNDER THE CONTRACT OF INSURANCE

§ 207.255 Defaults.

(a) The failure of the mortgagor to make any payments due under or provided to be paid by the terms of a mortgage insured under this subpart shall be considered a default under such mortgage.

(b) The failure to perform any other covenant under the provisions of a mortgage insured under this subpart shall be considered a default, provided the mortgagee, because of such default, has exercised its right under the mortgage and accelerated the debt.

(c) If such defaults as defined in paragraphs (a) and (b) of this section continue for a period of 30 days the mortgagee shall be entitled to receive the benefits of the insurance hereinafter provided.

(d) For the purposes of this section the date of default shall be considered as:

(1) The date of the first uncorrected failure to perform a covenant or obligation; or

(2) The date of the first failure to make a monthly payment which subsequent payments by the mortgagor are insufficient to cover when applied to the overdue monthly payments in the order in which they became due.

§ 207.256 Notice.

(a) If the default as defined in § 207.255 is not cured within the 30 day grace period, the mortgagee shall within 30 days thereafter notify the Commissioner in writing of such default.

(b) Notwithstanding the provision of § 207.255(b), the mortgagee will be required to give notice in writing to the Commissioner of the failure of the mortgagor to comply with such covenant regardless of the fact the mortgagee may not have elected to accelerate the debt.

§ 207.257 Commissioner's right to require acceleration.

Upon receipt of notice of violation of a covenant, as provided for in § 207.256

(b), or otherwise being apprised thereof, the Commissioner reserves the right to require the mortgagee to accelerate payment of the outstanding principal balance due in order to protect the interests of the Federal Housing Commissioner.

§ 207.258 Insurance benefits requirement.

(a) When the mortgagee becomes eligible for the benefits of the mortgage insurance, it shall within 45 days thereafter, or within such later time as may be agreed upon by the Commissioner in writing, notify the Commissioner in writing of its intention to file claim for debentures and of its election to proceed in accordance with subparagraphs (1) or (2) of this paragraph.

(1) At any time within 30 days after the date of such election, or within such further period as may be agreed upon by the Commissioner in writing, the mortgagee shall, in such manner as the Commissioner may require, assign, transfer and deliver to the Commissioner the original credit instrument and the mortgage securing the same, without recourse or warranty, except that the mortgagee must warrant that no act or omission of the mortgagee has impaired the validity and priority of the mortgage, that the mortgage is prior to all mechanics' and materialmen's liens filed of record subsequent to the recording of such mortgage regardless of whether such liens attached prior to such recording date, and prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to the recording of such mortgage, except such liens or other matters as may be approved by the Commissioner, that the amount stated in the instrument of assignment is actually due and owing under the mortgage, that there are no offsets or counterclaims thereto, and that the mortgagee has a good right to assign and will promptly deliver to the Commissioner the mortgage and other items enumerated below:

(i) All rights and interest arising under the mortgage so in default;

(ii) All claims of the mortgagee against mortgagor or others, arising out of the mortgage transaction;

(iii) All policies of title or other insurance or surety bonds or other guaranties, and any and all claims thereunder, including evidence satisfactory to the Commissioner that the original title coverage has been extended to include the assignment of the mortgage to the Commissioner.

(iv) Any balance of the mortgage loan not advanced to the mortgagor;

(v) Any cash or property held by the mortgagee or its agents or to which it is entitled, including deposits made for the account of the mortgagor, and which have not been applied in reduction of the principal of the mortgage indebtedness;

(vi) All funds held by the mortgagee for the account of the mortgagor and which were received pursuant to any other agreement;

(vii) All records, documents, books, papers and accounts relating to the mortgage transaction.

(viii) Any additional information or data which the Commissioner may require.

(2) If the mortgagee does not elect to proceed in accordance with subparagraph (1) of this paragraph, then at any time within a period of thirty days after the date of the notice of election to acquire title or within such later time as may be agreed upon by the Commissioner in writing, the mortgagee shall either

(i) With and subject to the consent of the Commissioner provide for transfer of title from the mortgagor or other appropriate grantor to the Commissioner or shall acquire by means other than foreclosure of the mortgage possession of and title to the mortgaged property; or

(ii) Institute proceedings for the foreclosure of the mortgage and either obtain possession of the mortgaged property and the income therefrom through the voluntary surrender thereof by the mortgagor or institute, and prosecute with reasonable diligence, proceedings for the appointment of a receiver to manage the mortgaged property and collect income therefrom or proceed to exercise such other rights and remedies as may be available to it for the protection and preservation of the mortgaged property and to obtain the income therefrom under the mortgage and the law of the particular jurisdiction: *Provided*, That if the laws of the state in which the mortgaged property is situated do not permit the institution of such proceedings within such period of time, the mortgagee shall institute such proceedings within 30 days after the expiration of the time during which the institution of such proceedings is prohibited by such laws. The mortgagee shall promptly give notice in writing to the Commissioner of the institution of foreclosure proceedings under this subparagraph, shall exercise reasonable diligence in prosecuting such proceedings to completion and shall report promptly to the Commissioner any developments which might delay the consummation of such proceedings. If after default and prior to the completion of foreclosure proceedings the mortgagor shall pay to the mortgagee all payments in default and such expenses as the mortgagee shall have incurred in connection with the foreclosure proceedings, notice thereof shall be given to the Commissioner by the mortgagee, and the insurance shall continue as if such default had not occurred.

(b) Nothing contained in this section shall be so construed as to require the mortgagee to take any action when the necessity therefor has been waived in writing by the Commissioner nor to prevent the mortgagee from taking action at a later date than herein specified if the Commissioner agreed thereto in writing.

§ 207.259 Insurance benefits.

(a) If the mortgagee elects to and does proceed in accordance with § 207.258 (a)(1) and furnishes evidence satisfactory to the Commissioner that there are no past due and unpaid ground rents, general taxes, or special assessments, and furnishes the warrantees described in said subparagraph, the Commissioner shall deliver to the mortgagee.

(1) Debentures of the Housing Insurance Fund as set forth in section 207 of the National Housing Act which debentures shall:

(i) Be issued as of the date the mortgage became in default;

(ii) Have a total face value equal to the value of the mortgage as defined in section 207 (g) of the National Housing Act, which value shall be determined by adding to the original principal of the mortgage which was unpaid on the date of default the amount and mortgagee may have paid for taxes, special assessments, and water rates which are liens prior to the mortgage; insurance on the property; and reasonable expenses for the completion and preservation of the property, and any mortgage insurance premiums paid after default; less the sum of an amount equivalent to one percent of the amount of the mortgage advanced to the mortgagor and not repaid; any amount received on account of the mortgage after such date; and any net income received by the mortgagee from the property after such date;

(iii) Be registered as to principal and interest;

(iv) At the option of the Commissioner and with the approval of the Secretary of the Treasury, be redeemed at par and accrued interest on any interest payment date on 3 months' notice of redemption given in such manner as the Commissioner shall prescribe;

(v) Mature 20 years from the date thereof;

(vi) Be issued in multiples of $50.00 and any difference not in excess of $50.00 between the amount of debentures to which the mortgagee is otherwise entitled hereunder and the aggregate face value of the debentures issued shall be paid in cash by the Commissioner to the mortgagee;

(vii) Bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect as of the date of the commitment was issued, or as of the date of initial insurance endorsement of the mortgage, whichever rate is the higher. The following interest rates are effective for the dates listed:

Effective rate (percent)	On or after—	Prior to—
3¾	Jan. 1, 1959	July 1, 1959
4⅛	July 1, 1959	Jan. 1, 1961
3⅞	Jan. 1, 1961	July 1, 1961
3¾	July 1, 1961	

(2) A certificate of claim in accordance with section 207 (h) of the National Housing Act which shall become payable, if at all, upon the sale and final liquidation of the interest of the Commissioner in such mortgage or such property. Such certificate shall be for an amount which the Commissioner determines to be sufficient, when added to the face value of the debentures issued and the cash adjustment paid to the mortgagee, to equal the amount which the mortgagee would have received if, on the date of the assignment, transfer and delivery to the Commissioner, the mortgagor had extinguished the mort-

gage indebtedness by payment in full of all obligations under the mortgage. Such certificate of claim shall provide that there shall accrue to the holder of such certificate with respect to the face amount of such certificate, an increment at the rate of three percent per annum, beginning on the date of the assignment of the mortgage to the Commissioner, but which shall not be compounded. If any excess is realized from the mortgage and all claims in connection therewith so assigned, transferred and delivered, and from the property covered by such mortgage and all claims in connection with such property, after deducting all expenses incurred by the Commissioner in handling, dealing with, acquiring title to, and disposing of such mortgage and property and in collecting such claims, such excess shall be applied in payment of the certificate of claim and any balance thereafter shall be retained by the Commissioner and credited to the Housing Insurance Fund.

(b) If the mortgagee elects to proceed under, and does proceed under and in accordance with, the provisions of § 207.258(a)(2) and at any time within 30 days (or such further time as may be allowed by the Commissioner in writing) tenders or causes to be tendered to the Commissioner possession of the mortgaged property and a deed thereto containing covenants satisfactory to the Commissioner, together with a bill of sale covering any personal property to which the mortgagee is entitled by reason of the mortgage transaction, conveying title to such property satisfactory to the Commissioner, and assigns or causes to be assigned (without recourse or warranty) any and all claims which have been acquired in connection with the mortgage transaction and as a result of any foreclosure proceedings or other means by which it may have acquired such property, including but not limited to any claims on account of title insurance and fire or other hazard insurance, except such claims as may have been released with the prior approval of the Commissioner, the Commissioner shall promptly accept conveyance of such property and such assignments, notwithstanding that the buildings or improvements thereon shall be incomplete or may have been destroyed, damaged, or injured in whole or in part, and shall deliver to the mortgagee debentures as provided in § 207.259(a), except that the one percent deduction set out therein with respect to the amount of debentures shall not apply, and a certificate of claim as provided in § 207.259(a) which shall include a reasonable amount for any necessary expenses incurred by the mortgagee in connection with the foreclosure proceedings or the acquisition of the mortgaged property otherwise, and in the conveyance thereof to the Commissioner.

(c) Title satisfactory to the Commissioner will be such title as was vested in the mortgagor as of the date the mortgage was filed for record, but must be free and clear of all mechanics' and materialmen's liens filed of record subsequent to the recording of such mortgage, regardless of whether such liens attached prior to such recording date, and free and clear of all liens and encumbrances which may have attached, or defects which may have arisen subsequent to the recording of such mortgage, except such liens or other matters as may be approved by the Commissioner.

(d) The mortgagee, at the time a deed is tendered shall furnish to the Commissioner without expense to him satisfactory evidence of title. Such title evidence shall be executed as of a date to include the recordation of the deed to the Commissioner and, shall be in the form of an owner's policy of title insurance, or a satisfactory abstract and attorney's opinion covering the period subsequent to the recording of the mortgage, or a satisfactory continuation of the title evidence accepted by the Commissioner at the time the mortgage was insured, depending upon the form of title evidence originally accepted by the Commissioner.

(e) In the event the mortgagee acquires title to the mortgaged property, but does not convey it to the Commissioner, and the Commissioner is given written notice that it will not do so, or in the event the mortgagor pays the obligation under the mortgage in full, prior to the maturity thereof, and the mortgagee pays any adjusted premium required, and the Commissioner is given written notice by the mortgagee of such payment by the mortgagor, the obligation to pay any subsequent premium charge for insurance shall cease and all rights of the mortgagee, under the contract of insurance shall terminate as of the date of such notice.

(Sec. 207, 52 Stat. 16, as amended; 12 U.S.C. 1713)

(a) *Annual inspection of property by mortgagee.* So long as the mortgage is an insured mortgage, the mortgagee shall ascertain the general physical condition of the mortgaged property in each calendar year commencing with the calendar year following completion of the project. The mortgagee shall furnish the Commissioner and the mortgagor with a copy of its inspection report, which shall contain the mortgagee's recommendations for any necessary corrective action.

(b) *Restoration of property by mortgagee.* If, at any time, it be determined by the mortgagee that, in addition to ordinary wear and tear, the mortgaged property is being subjected to permanent or substantial injury, through unreasonable use, abuse or neglect, the mortgagee shall, unless adequate provision satisfactory to a prudent lender is made for the prompt restoration of the mortgaged property, forthwith take such action as may be available to it under the mortgage and appropriate to the particular case, for the protection and preservation of the mortgaged property and the income therefrom.

(c) *Effect of failure to protect property.* In the event claim for debentures is filed, the Commissioner may reduce the amount of debentures to the extent of any loss sustained as a result of failure to comply with the provisions of paragraphs (a) and (b) of this section.

(d) *Insurance of property against fire and hazard.* The mortgaged premises shall at all times be insured against fire and other hazards as provided in the mortgage. The duty shall be upon the mortgagee to provide such coverage in the event the mortgager fails to do so. If the mortgagee fails to pay any premiums necessary to keep the mortgaged premises so insured the contract of insurance may be terminated at the election of the Commissioner.

(e) *Effect of failure to provide fire and hazard insurance.* If at the time claim is filed for debentures, the property has been damaged by fire or other hazards and loss has been sustained by reason of failure to keep the property insured as provided in the mortgage, the amount of such loss may be deducted from the amount of the debentures.

(f) *Application of fire and hazard insurance proceeds.* (1) In the event a loss has occurred to the mortgaged property under any policy of fire or other hazard insurance and the mortgagee has received the proceeds therefrom, it shall not exercise its option under the mortgage to use the proceeds of such insurance for the repairing, replacing, or rebuilding of the premises, or apply them to the mortgage indebtedness, without the prior written approval of the Commissioner.

(2) If the proceeds are applied to the mortgage with such prior written approval and result in the payment in full of the entire mortgage indebtedness, the contract of mortgage insurance made with the Commissioner shall thereupon terminate.

(3) If the Commissioner shall fail to give his approval to the use or application of such funds for either of said purposes within thirty days after written request by the mortgagee, the mortgagee may use or apply such funds for any of the purposes specified in the mortgage without the approval of the Commissioner.

ASSIGNMENTS

§ 207.261 Assignment of insured mortgages.

(a) Bonds or other obligations issued in connection with an insured mortgage executed in the form of an indenture of trust providing for the issue and sale of such bonds or other obligations and appointing a trustee to act on behalf of the holders of such bonds or other obligations may be transferred as provided in the indenture of trust.

(b) An insured mortgage, other than those described in paragraph (a) of this section, may not be transferred or pledged prior to the full disbursement of the mortgage loan, except with the prior written approval of the Commissioner which approval may be subject to such conditions and qualifications as the Commissioner may prescribe. Subsequent to full disbursement such mortgage may be transferred only to a trans-

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feree who is a mortgagee approved by

exclusively for the benefit of other bank-

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Sec.
213.37 Rehabilitation projects.

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may have been destroyed, damaged, or injured in whole or in part, and shall deliver to the mortgagee debentures as

charge for insurance shall cease and all rights of the mortgagee, under the con-

been damaged by fire or other hazards

feree who is a mortgagee approved by the Commissioner. Upon such transfer and the assumption by the transferee of all obligations under the contract of insurance the transferor shall be released from its obligations under the contract of insurance.

(c) The contract of insurance shall terminate with respect to mortgages described in paragraph (b) of this section upon the happening of either of the following events:

(1) The transfer or pledge of the insured mortgage to any person, firm, or corporation, public or private, other than an approved mortgagee.

(2) The disposal by a mortgagee of any partial interest in the insured mortgage by means of a declaration of trust or by a participation or trust certificate or by any other device, unless with the prior written approval of the Commissioner, which approval may be subject to such conditions and qualifications as the Commissioner in his discretion may prescribe: *Provided*, That this paragraph shall not be applicable to any mortgage so long as it is held in a common trust fund maintained by a bank or trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank or trust company in its capacity as a trustee, executor or administrator; and in conformity with the rules and regulations prevailing from time to time of the Board of Governors of the Federal Reserve System, pertaining to the collective investment of trust funds: *Provided further*, That this paragraph shall not be applicable to any mortgage so long as it is held in a common trust estate administered by a bank or trust company which is subject to the inspection and supervision of a governmental agency, exclusively for the benefit of other banking institutions which are subject to the inspection and supervision of a governmental agency, and which are authorized by law to acquire beneficial interests in such common trust estate, nor to any mortgage transferred to such a bank or trust company as trustee exclusively for the benefit of outstanding owners of undivided interest in the trust estate, under the terms of certificates issued and sold more than three years prior to said transfer, by a corporation which is subject to the inspection and supervision of a governmental agency.

RIGHTS IN HOUSING FUND

§ 207.262 No vested right.

Neither the mortgagee nor the mortgagor shall have any vested or other right in the Housing Insurance Fund.

AMENDMENTS

§ 207.263 Amendments not to change contractual rights.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee under the contract of insurance on any mortgage already insured or to be insured on which the Commissioner has made a commitment to insure.

EFFECTIVE DATE

§ 207.264 Effective date.

The regulations in this subpart shall be effective as to all mortgages with respect to which a commitment to insure is issued on or after the date hereof.

SUBCHAPTER E—COOPERATIVE HOUSING INSURANCE

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

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213.751 Incorporation by reference.

AUTHORITY: §§ 213.1 to 213.751 issued under sec. 211, 52 Stat. 23, as amended, sec. 213, 64 Stat. 54, as amended, 12 U.S.C. 1715b, 1715e.

Subpart A—Eligibility Requirements—Projects

DEFINITIONS

§ 213.1 Definitions.

As used in this subpart, the following terms will have the meaning indicated.

(a) "Commissioner" means the Federal Housing Commissioner or his authorized representatives.

(b) "Act" means the National Housing Act, as amended.

(c) "Private Mortgagor" means a private corporation or trust, formed or created with the approval of the Commissioner, which is regulated or restricted by the Commissioner as to rents, sales, charges, capital structure, rate of return, and methods of operation.

(d) "Public Mortgagor" means a corporation or trust approved by the Commissioner which is also a Federal or State instrumentality, a municipal corporate instrumentality of one or more States, or a limited dividend or redevelopment or housing corporation formed under and restricted by Federal or State laws or regulations of a State banking or insurance department as to rents, charges, capital structure, rate of return, or methods of operation.

(e) "Purchasing Cooperative" means the mortgagor of a Management Project which has purchased the project from the mortgagor of an Investor Project.

(f) "Management Project" means a project owned by a mortgagor nonprofit cooperative ownership housing corporation or trust which restricts permanent occupancy of the project to the members of the corporation or to the beneficiaries of the trust.

(g) "Sales Project" means a project owned by a mortgagor nonprofit housing corporation or trust which is organized for the purpose of construction of homes for members of the corporation or for beneficiaries of the trust.

(h) "Investor Project" means a project owned by a mortgagor which intends to sell the project to the mortgagor of a Management Project.

(i) "Existing Construction" means a project or projects constructed prior to the filing of an application for mortgage insurance under section 213(i) of the Act which is to be owned and operated by a Consumer Cooperative as a Management Project.

(j) "Consumer Cooperative" means:

(1) A nonprofit cooperative ownership housing corporation or trust which is the owner of an Existing Construction subject to an outstanding indebtedness and is approved by the Commissioner for refinancing the indebtedness with insured mortgage; or

(2) A nonprofit cooperative ownership housing corporation or trust organized for the purpose of purchasing an Existing Construction, the members and organizers of which do not have an identity of interest with the seller of the Existing Construction except where the Commissioner has approved such interest as being consistent with the objectives of the cooperative.

(3) A nonprofit cooperative housing corporation or trust initiated and organized by bona fide members or stockholders who are the ultimate consumers, or by a consumer group or sponsor, the members and organizers of which do not have an identity of interest with the builder or landowner and which conducts all transactions between it and the builder and the landowner on an arms-length basis.

(k) "Approved percentage" means 90 percent in the case of an Investor Project, and 97 percent in the case of a Management, Sales or Existing Construction Project.

(l) "Borrower" means the mortgagor of a Management Project which receives and becomes primarily obligated for the payment of a supplementary loan.

(m) "Supplementary Loan" means an advance of funds or credit evidenced by a note pursuant to Section 213(j) of the Act.

(n) "Lender" means a financial institution meeting the requirements of §§ 203.51 through 203.54 of this chapter.

APPLICATION AND COMMITMENT

§ 213.2 Preliminary examination; filing of application and issuance of commitment.

(a) *Preliminary examination.* Prior to the filing of an application, the sponsors of a housing project shall upon request be given a preliminary analysis of the proposed project with respect to specific questions of eligibility other than questions requiring a determination of the value of the property or project or the maximum insurable mortgage amount, and such preliminary analysis

shall be given without the payment of a

after insurance and prior to final en-

the mortgage is situated, which form

exceed that prescribed for a Manage-

shall be given without the payment of a fee.

(b) *Filing of application.* Applications for mortgage insurance shall be submitted by an approved mortgagee on an approved application form. No application shall be considered unless the exhibits called for by such form are furnished.

(c) *Issuance of commitment.* Upon approval of an application, the Commissioner will issue a commitment setting forth the terms and conditions upon which the mortgage will be insured.

§ 213.3 Fees required by Commissioner.

(a) *Private Mortgagors.* In the case of a Private Mortgagor, the following fees shall be paid:

(1) *Application fee.* An application fee of $1.50 per thousand of the face amount of the mortgage loan applied for at the time the application is filed.

(2) *Commitment fee.* A commitment fee which, when added to the application fee, will aggregate $3.00 per thousand of the face amount of the mortgage loan set forth in the commitment within 30 days subsequent to the date of the commitment or within such additional period of time as the Commissioner may prescribe.

(b) *Public Mortgagors.* In the case of a Public Mortgagor, the application and commitment fees to be paid under this section shall be fixed by the Commissioner, but shall not exceed $3.00 per thousand of the face amount of the mortgage loan set forth in the commitment.

(c) *Investor Project.* In the case of an Investor Project, the application and commitment fees to be paid under this section shall be based upon the commitment amount applicable to the owner of a management type project.

(d) *Increased commitment — additional fees.* Upon application for an increase in the amount of an existing commitment, the mortgagee shall pay:

(1) *Application fee.* An additional application fee of $1.50 per thousand dollars based upon the amount of the increase requested.

(2) *Commitment fee.* An additional commitment fee which, when added to the additional application fee, will aggregate $3.00 per thousand of the amount of the increase. If the amount of the insured mortgage is increased after insurance and prior to final endorsement either by amendment or by the substitution of a new insured mortgage, the fees herein provided for shall be based upon the amount of such increase.

(e) *Inspection fee.* The commitment may provide for the payment of an inspection fee in the amount not to exceed $5.00 per thousand dollars of the commitment.

(f) *Refund of fees.* If an application is rejected before it is assigned for processing by the Commissioner or in such other instances as the Commissioner may determine, the entire fee or any portion thereof may be returned to the applicant.

§ 213.4 Maximum charges and fees by mortgagee.

The mortgagee may collect from the mortgagor the amount of any fees required by the Commissioner and may charge the mortgagor an initial service charge in an amount not to exceed 1½ percent of the original principal amount of the mortgage. Any additional charges or fees collected from the mortgagor shall be subject to prior approval of the Commissioner.

§ 213.5 Commissioner's estimate of replacement cost and appraised value.

As a condition precedent to insurance of a mortgage on a Sales Project or an Existing Construction Project, evidence must be produced showing that, prior to any sale of the dwellings in the project and stock of the mortgagor corporation, a written statement acceptable to the Commissioner setting forth the amount of the Commissioner's estimate of the replacement cost (appraised value in the case of a mortgage on an Existing Construction Project) of the property has been delivered by the seller, builder, sponsor, or such other person as may be required by the Commissioner, to the purchasers of the dwellings, and subscribers for such stock.

ELIGIBLE MORTGAGES AND SUPPLEMENTARY LOANS

§ 213.6 Mortgage and supplementary loan provisions.

(a) *Mortgage form.* The mortgage shall be:

(1) Executed on a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated, which form shall not be changed without the prior written approval of the Commissioner.

(2) Executed by a mortgagor with the qualifications as provided in this subpart.

(3) A first lein on property that conforms with the property standards prescribed by the Commissioner.

(b) *Disbursement of the mortgage.* The mortgagee shall be obligated, as a part of the mortgage transaction, to disburse the principal amount of the mortgage, to, or for the account of the mortgagor or to his creditors for his account and with his consent.

(c) *Management of property.* The mortgage shall provide that the mortgagor will not arrange for management of the property except in a manner and under an agreement approved by the mortgagee and the Commissioner in writing.

(d) *Supplementary loans.* The lender shall obtain and present for insurance a note in a form acceptable to the Commissioner which is valid and enforceable against the borrower. In addition to the customary provisions the note shall contain the following:

(1) An acceleration clause, which at the option of the holder, operates to make the entire amount of the note due and payable in the event any installment of interest and principal is not paid within 30 days after it becomes due.

(2) On the reverse side, an endorsement panel in the form set forth in §§ 213.266 and 213.268.

§ 213.7 Maximum insurable amounts.

(a) *Management Project.* The mortgage covering a Management Project shall not exceed the lesser of the following:

(1) $20,000,000 if executed by a Private Mortgagor;

(2) $25,000,000 if executed by a Public Mortgagor;

(3) 97 percent of the Commissioner's estimate of the replacement cost of the project;

(4) $2,500 per room (or $9,000 per family unit if the number of rooms in such project averages less than four per family unit) for such part of such project as may be attributable to dwelling use (excluding exterior land improvements as defined by the Commissioner).

(b) *Investor Project.* The mortgage covering an Investor Project shall not exceed that prescribed for a Management Project, except that the percentage of replacement cost referred to shall not exceed 90 percent.

(c) *Sales Project.* The mortgage covering a Sales Project shall not exceed $12,500,000 and the greater of the following amounts:

(1) A sum computed on the basis of a separate mortgage for each single-family dwelling comprising the project, equal to the total of each of the maximum principal obligations of such mortgage which would meet the requirements of section 203(b)(2) of the Act for occupant mortgagors; or

(2) A sum not to exceed $2,500 per room (or $9,000 per family unit if the number of rooms in such project averages less than four per family unit) for such part of such project as may be attributable to dwelling use (excluding exterior land improvements, as defined by the Commissioner) but not to exceed 97 percent of the amount which the Commissioner estimates will be the replacement cost of the project.

(d) *Increased mortgage amount—high cost areas.* (1) In any geographical area where the Commissioner finds cost levels so require, the Commissioner may increase the dollar amount limitations by an amount not to exceed $1,250 per room without regard to the number of rooms being four, less than four, or more than four;

(2) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased in such amounts as the Commissioner finds may be necessary to compensate for such costs, but not to exceed, in any event, the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

(e) *Adjusted mortgage amount—rehabilitation projects.* A mortgage having a principal amount computed in compliance with the applicable provisions of this section, and which involves a project to be repaired or rehabilitated, shall be subject to the following additional limitations:

(1) *Property held in fee.* If the mortgagor is the fee simple owner of the project, the maximum mortgage amount shall not exceed 100 percent of the Commissioner's estimate of the cost of the proposed repairs or rehabilitation; or

(2) *Property subject to existing mortgage.* If the mortgagor owns the project subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the maximum mortgage amount shall not exceed:

(i) The Commissioner's estimate of the cost of the repair or rehabilitation; plus

(ii) Such portion of the outstanding indebtedness as does not exceed the approved percentage of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation; or

(3) *Property to be acquired.* If the project is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the maximum mortgage amount shall not exceed the approved percentage of:

(i) The Commissioner's estimate of the cost of the repair or rehabilitation; and

(ii) The actual purchase price of the land and improvements, but not in excess of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation.

(f) *Reduced mortgage amount—leaseholds.* The maximum mortgage amount based upon the limitations of this section is subject to reduction by an amount equal to the capitalized value of the ground rent in the event the mortgage is on a leasehold estate rather than on a fee simple holding.

(g) *Increased mortgage amount—elevator type structures.* In order to compensate for the higher costs incident to cost of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitation of $2,500 per room to not to exceed $3,000 per room, and the limitation of $9,000 per family unit to not to exceed $9,400 per family unit.

(h) *Existing Construction.* A mortgage covering Existing Construction shall involve a principal obligation not in excess of the approved percentage of the Commissioner's appraised value for continued use as a cooperative, including therein such Commissioner required or approved repairs, improvements, alterations and additions, if any, as do not constitute rehabilitation of the project as determined by the Commissioner; provided, the insured mortgage shall be subject to the following further limitations:

(1) If the insured mortgage is to include the cost of refinancing an existing mortgage or mortgages acceptable to the Commissioner, the amount of the insured mortgage shall not exceed an amount equal to the outstanding balance of the existing mortgage or the total of the outstanding balances of the existing mortgages, plus the contract cost of such Commissioner required or approved repairs, improvements, alterations and additions, if any. If the principal obligation of the mortgage exceeds this amount, the mortgage shall be reduced by the amount of such excess prior to final endorsement;

(2) If the Existing Construction project is to be acquired, the mortgage shall not exceed the purchase price and costs related thereto as approved by the Commissioner plus the contract cost of such Commissioner required or approved repairs, improvements, alterations and additions, if any. If the principal obligation of the mortgage exceeds this amount, the mortgage shall be reduced by the amount of such excess prior to final endorsement.

(i) *Commercial and community facilities.* (1) A Management or an Investor Project may include such commercial and community facilities as the Commissioner deems adequate to serve the occupants.

(2) A Sales Project may include such community facilities as the Commissioner deems adequate to serve the occupants.

(3) The maximum mortgage amount for mortgages issued under this part may be increased by such amount as the Commissioner deems appropriate to provide for the inclusion of commercial or community facilities except that a mortgage on a Sales Project shall not be increased to provide for commercial facilities. The total mortgage amount shall not exceed the ratios of loan to replacement cost or value specified in this section because of the inclusion of commercial or community facilities.

(j) *Mortgagor's minimum investment—Sales Projects.* At the time a mortgage executed by a mortgagor of a Sales Project is insured, the mortgagor shall have paid on account of the project in cash or its equivalent an amount, if any, approved and determined by the Commissioner to be the required minimum investment. At the time a mortgage is executed each member or stockholder shall have paid the amount required by § 213.509(b). With respect to applications received on or after July 5, 1961, the required minimum investment shall be at least 3 percent of the Commissioner's estimate of cost of acquisition or such larger amount as the Commissioner may determine.

(k) *Increased mortgage amount—operating losses.* When the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project, excluding depreciation, covered by such mortgage during the two years following final endorsement exceed the project income, the Commissioner may, in his discretion and upon such terms and conditions as he may prescribe, permit the excess of the foregoing expenses over the project income to be added to the amount of such mortgage, and extend the coverage of the mortgage insurance thereto, and any such additional advance by the mortgagee to cover such excess shall be deemed to be part of the original face amount of the mortgage.

(l) *Supplementary loans.* The maximum amount of supplementary loan shall not exceed the lesser of the following:

(1) The Commissioner's estimate of the cost of the improvements, repairs, or community facilities; or

(2) An amount which, when added to the total unpaid balance of all insured mortgages or loans insured by the Commissioner on the property, creates a total outstanding indebtedness equal to the original principal obligation of the mortgage; or

(3) The actual cost, as approved by the Commissioner, of the improvements, repairs, or community facilities.

(m) *Reduction of supplementary loan.* If the supplementary loan exceeds the prescribed maximum amount, the loan shall be reduced by the amount of such excess prior to final endorsement.

§ 213.8 Amortization period.

The mortgage or supplementary loan shall have a maturity and shall contain amortization provisions satisfactory to the Commissioner. Mortgage maturity shall not exceed 40 years from the date of the beginning of amortization of the mortgage. With respect to applications for a Sales Project received on and after July 5, 1961, mortgage maturity shall not exceed 35 years from the date of the beginning of amortization of the mortgage. Supplementary loan maturity shall not exceed the remaining term of the mortgage covering the Management Project.

§ 213.9 Payment requirements.

(a) *Method of payment.* The mortgage shall provide for monthly payments on the first day of each month on account of interest and principal and shall provide for payments in accordance with an amortization plan as agreed upon by the mortgagor, the mortgagee and the Commissioner.

(b) *Date of first payment to principal.* The Commissioner shall estimate the time necessary to complete the project and shall establish the date of the first payment to principal so that the lapse of time between completion of the project and commencement of amortization will not be longer than necessary to obtain sustaining occupancy.

§ 213.10 Maximum interest rate.

The mortgage or a supplementary loan may bear interest at such rate as may be agreed upon by the mortgagee and the mortgagor, or the lender and the borrower. The interest rate for a mortgage shall not exceed 5¼ percent and for a supplementary loan shall not exceed 6 percent. Interest shall be payable in monthly installments on the principal then outstanding.

§ 213.11 Mortgage to cover the entire property.

The mortgage shall cover the entire property included in the housing project.

§ 213.12 Covenant against liens.

The mortgage shall, except as otherwise provided in this subpart, contain a covenant against the creation by the mortgagor of liens against the property superior or inferior to the lien of the mortgage.

in excess of the approved percentage of the Commissioner's appraised value for

tion because of the inclusion of commercial or community facilities.

shall be reduced by the amount of such excess prior to final endorsement.

superior or inferior to the lien of the mortgage.

§ 213.13 Covenant for fire insurance.

The mortgage shall contain a covenant acceptable to the Commissioner binding the mortgagor to keep the property insured by a standard policy or policies against fire and such other hazards as the Commissioner, upon the insurance of the mortgage, may stipulate, in an amount which will comply with the coinsurance clause applicable to the location and character of the property, but not less than 80 percent of the actual cash value of the insurable improvements and equipment of the project. The initial coverage shall be in an amount estimated by the Commissioner at the time of completion of the entire project or units thereof. The policies evidencing such insurance shall have attached thereto a standard mortgagee clause making loss payable to the mortgagee and the Commissioner, as interests may appear.

§ 213.14 Accumulation of accruals.

(a) The mortgage shall provide for payments by the mortgagor to the mortgagee on each interest payment date of an amount sufficient to accumulate in the hands of the mortgagee one payment period prior to its due date, the next annual mortgage insurance premium payable by the mortgagee to the Commissioner. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize the ground rents, if any, and the estimated amount of all taxes, water rates and special assessments, if any, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become delinquent. The mortgage shall further provide that such payments shall be held by the mortgagee, for the purpose of paying such ground rents, taxes, water rates and assessments, and insurance premiums, before the same become delinquent. The mortgage must also make provision for adjustments, in case the estimated amount of such taxes, water rates and assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor.

§ 213.15 Application of payments.

(a) The mortgage shall provide that all monthly payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate amount thereof shall be paid by the mortgagor upon each monthly payment date in a single payment. The mortgagee shall apply the same to the following items in the order set forth:

(1) Premium charges under the contract of insurance;

(2) Ground rents, taxes, special assessments and fire and other hazard insurance premiums;

(3) Interest on the mortgage;

(4) Amortization of the principal of the mortgage.

(b) Any deficiency in the amount of any such aggregate monthly payment shall constitute an event of default. The mortgage shall further provide for a grace period of 30 days, within which time the default must be made good.

§ 213.16 Mortgage covenant regarding racial restrictions and use of property.

(a) The mortgage shall contain a covenant by the mortgagor that until the mortgage has been paid in full, or the contract of insurance otherwise terminated, he will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the mortgaged property on the basis of race, color, or creed. Such covenant shall be binding upon the mortgagor and his assigns and shall provide that upon violation thereof, the mortgagee may, at its option, declare the unpaid balance of the mortgage immediately due and payable.

(b) The mortgage shall contain a covenant prohibiting the use of the property covered thereby for any purpose other than that for which it was intended at the date the mortgage was executed.

§ 213.17 Mortgage release provisions.

A mortgage executed by a mortgagor of a Sales Type Project shall provide that at any time after the completion of the construction of the project, the property underlying such mortgage may be released, in whole or in part, upon payment of the unpaid balance of the blanket mortgage allocable to the property released. Where the mortgage does not contain release provisions, no property shall, except with the consent of the Commissioner, be released from the lien thereof so long as the mortgage insurance is in force.

§ 213.18 Prepayment privilege; prepayment and late charges.

(a) *Prepayment privilege.* The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment date after giving to the mortgagee 30 days' notice in writing in advance of its intention to so prepay.

(b) *Prepayment charge.* The mortgage may include a provision for such additional prepayment charge as may be agreed upon between the mortgagor and mortgagee, except that no such charge shall be made for a prepayment which does not exceed 15 percent of the original principal amount of the mortgage in any one calendar year or which results from:

(1) A payment requirement of the Commissioner;

(2) Release of individual properties in accordance with the provisions of a mortgage in a Sales Project;

(3) Sale of an Investor Project within 2 years after its completion to a Purchasing Cooperative unless the Commissioner shall require the payment of such additional charge.

(c) *Late charge.* The mortgage may provide for the collection by the mortgagee of a "late charge," not to exceed 2 cents for each dollar of each payment to interest and/or principal more than 15 days in arrears, to cover the extra expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

§ 213.19 Issuance of bonds.

In the event that bonds are to be issued as a part of the insured mortgage transaction, all arrangements with respect to the issuance and sale of such bonds shall be subject to approval by the Commissioner.

ELIGIBLE MORTGAGORS

§ 213.20 Eligibility of mortgagors.

(a) In order to be eligible under this part, an applicant shall be a Private or Public Mortgagor of:

(1) A Management Project;

(2) A Sales Project;

(3) An Investor Project; or

(4) An Existing Construction Project.

(b) A Public Mortgagor may be an eligible mortgagor without regulation or restriction by the Commissioner as to rents, sales, charges, capital structure, rate of return, and methods of operation.

SUPERVISION OF MORTGAGORS

§ 213.21 Liens.

If a Public Mortgagor, or the Alaska Housing Authority, or the Government of Guam or Hawaii, or any agency or instrumentality thereof is the mortgagor, liens inferior to the lien of the insured mortgage may be allowed against properties of such mortgagors. The mortgagor in such case shall have initial funds which may be considered in lieu of the equity required of other mortgagors and such funds, which may be in the form of Government grants, loans, or subsidies, or in other form, if sufficient in amount, will be considered satisfactory provided they do not create a lien against the property prior to that of the insured mortgage.

§ 213.22 Obligations of mortgagor.

In all other cases a mortgagor must certify at final endorsement of the loan for insurance that the property covered by the mortgage is free and clear of all liens other than such mortgage, and that there are not outstanding any other unpaid obligations, except such obligations as have been approved by the Commissioner as to terms, form, and amount.

§ 213.23 Regulation and restriction of mortgagors.

(a) *Preferred stock or regulatory agreement.* The regulation or restriction of Private Mortgagors will be provided for in the certificate of incorporation or other instrument under which the mortgagor is created, hereinafter referred to as the "charter," and will be made effective through a regulatory agreement, or the issuance of preferred stock (or membership) which will enable the Commissioner to exercise majority voting rights in the event of violation of a provision of the charter or (except as to the mortgagor of an Investor Project) at any time during the period between initial and final endorsement for mortgage insurance by the Commissioner whether or not such vio-

lation has occurred. Such stock shall be issued in a manner prescribed by the Commissioner in consideration of the payment by the Commissioner of not exceeding in the aggregate $100.

(b) *Rights of the Commissioner.* By the exercise of the preferred stock voting rights, the Commissioner may remove the existing directors of the mortgagor corporation and elect new directors to serve in their place. Directors so elected by the Commissioner, in the event of a violation, shall serve only for a period coexistent with the duration of such violation or until the Commissioner is assured in a manner satisfactory to him against future violations of a similar nature. Upon the termination of the contract of insurance or any succeeding contract or agreement covering the mortgage obligation, all regulation and restriction of the mortgagor shall terminate and the shares of special stock or other evidence of beneficial interest shall be surrendered by the Commissioner upon reimbursement of his payment therefor.

§ 213.24 Issuance of stock.

(a) Shares of capital stock, either with or without par value, or certificates of membership, or such evidences of interest in the case of a trust, may be issued if approved by the Commissioner. Such stock or interest, together with paid-in surplus, if any, shall represent the capital investment.

(b) [Reserved]

§ 213.25 Patronage refunds.

Surplus funds, after meeting reserves and after meeting all obligations of the mortgagor, may be distributed to the members in the form of reduced carrying charges or reduced sales prices of the dwelling accommodations, or patronage refunds.

§ 213.26 Working capital.

The amount of working capital, if any, required by the Commissioner to be deposited by the mortgagor with the mortgagee or in a depository satisfactory to the mortgagee and under its control, shall not exceed 2 percent of the original principal amount of the mortgage. Disbursements from such deposit shall be made only in a manner prescribed by the Commissioner.

§ 213.27 Assurances of completion.

(a) The mortgagor must establish in a manner satisfactory to the Commissioner that, in addition to the proceeds of the insured mortgage, the mortgagor has funds sufficient to assure completion of construction of the project and to pay all carrying charges, financing and organization expenses incidental to the construction of the project. Unless other provisions acceptable to the Commissioner are made, such funds shall be deposited with and held by the mortgagee in a special account or by an acceptable depository designated by the mortgagee under an appropriate agreement approved by the Commissioner which will require all such funds to be expended for work and material on the physical improvements and for other charges and expenses to be paid when due prior to the advance of any mortgage money.

(b) The Commissioner may require the deposit with the mortgagee or with an acceptable trustee or escrow agent designated by the mortgagee, under an appropriate agreement, of such cash as may be required for the completion of off-site public utilities and streets.

(c) The mortgagor and the mortgagee shall, prior to the insurance of the mortgage, execute an agreement acceptable to the Commissioner providing for the manner and conditions under which advances (if any) during construction are to be made by the mortgagee and approved for insurance by the Commissioner. Such agreement shall require the mortgagee to notify the Commissioner, through the insuring office having jurisdiction over the territory in which the property is situated, in writing, on an application form prescribed by the Commissioner, of the proposed date and the amount of the advance to be made, and the Commissioner shall deliver to the mortgagee within a reasonable time from the date of such notice a certificate executed on behalf of the Commissioner on a form prescribed by him setting forth the amount approved for insurance or advising the mortgagee of the Commissioner's nonapproval and setting forth the reasons therefor. Such agreement shall be set forth on a form prescribed by the Commissioner; shall contain such additional terms, conditions, and provisions as the Commissioner shall in the particular case prescribe or approve, and when properly executed by the Commissioner and the mortgagee, shall constitute a part of the mortgage insurance contract.

(d) The mortgagor shall furnish assurance of completion of the project in a form and amount approved by the Commissioner, as follows:

(1) A bond of a surety company with the mortgagor and mortgagee as joint obligees in the penal sum of at least 10 percent of the estimated cost of construction of the project; or

(2) An escrow deposit under an agreement with the mortgagee, or with a depository satisfactory to the mortgagee and the Commissioner, of cash, or of securities of, or fully guaranteed as to principal and interest by, the United States of America, in an amount at least equal to 10 percent of the estimated cost of construction of the project.

(e) For a supplementary loan, the Commissioner may require such assurance of completion of the improvements, repairs or community facility as he deems necessary, and the supplementary loan may be required to be secured in a manner satisfactory to the Commissioner, including but not limited to, collateral security, modification of existing instruments, and title evidence.

§ 213.28 Labor standards and prevailing wage requirements.

(a) Any contract or subcontract executed for the performance of construction of the project shall comply with all applicable labor standards and provisions of the regulations of the Secretary of Labor, issued May 9, 1951 (29 CFR 5.1–5.12).

(b) No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established and maintained by the Comptroller General, pursuant to § 5.6 (b) of the regulations of the Secretary of Labor, issued May 9, 1951 (29 CFR 5.6 (b)).

(c) No advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed on the ineligible list established by the Comptroller General, pursuant to the provisions of the Secretary of Labor, issued May 9, 1951 (29 CFR 5.6 (b)).

(d) No advance under any mortgage shall be eligible for insurance unless there is filed with the application for such advance a certificate or certificates in the form required by the Commissioner, supported by such other information as the Commissioner may prescribe, certifying that the laborers and mechanics employed in the construction of the dwelling or dwellings or housing project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor prior to the beginning of construction and after the date of filing of the application for insurance.

(e) Any contract or subcontract executed for the performance of construction of the project shall contain the provision that there shall be no discrimination against any employee, or applicant for employment, because of race, color, creed, or national origin.

(f) Compliance with the provisions of this section shall be evidenced at such time and in such manner as the Commissioner may prescribe.

§ 213.29 Rents and charges.

The mortgagor shall not permit occupancy except in accordance with the schedule of charges and under an Occupancy Agreement or lease approved by the Commissioner.

§ 213.30 Methods of operation.

(a) Except with the prior written approval of the Commissioner, no compensation shall be paid by the corporation to its officers or directors, as such, nor to any person or corporation for supervisory or managerial services. No compensation shall be paid by the corporation to any employee in excess of an amount agreed upon by the Commissioner and specified in the charter. *No officer, director, stockholder, agent, or employee of the corporation shall in any*

manner become indebted to the corporation, except on account of approved oc-

designate and in such form as prescribed by the Commissioner:

(f) The provisions of § 213.28 shall apply to the mortgage covering Existing

days, or (b) any rental, if the occupants of the housing accommodations are pro-

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manner become indebted to the corporation, except on account of approved occupancy charges.

(b) The corporation shall maintain its project, the grounds, buildings, and equipment appurtenant thereto, in good repair and in such condition as will preserve the health and safety of its occupants.

(c) A Fund for Replacements shall be established and maintained with the mortgagee so long as the mortgage insurance is in force, and the amount and type of such fund and the conditions under which it shall be accumulated, replenished and used, shall be specified in the charter.

(d) A General Operating Reserve shall also be established and maintained so long as the mortgage insurance is in force, in a manner and for the purposes specified in the charter.

(e) The corporation shall not, without prior approval of the Commissioner, incur liabilities (other than the insured mortgage) in excess of an amount to be specified in the charter.

(f) The corporation, its property equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and papers shall be subject to inspection and examination by the Commissioner or his duly authorized agent at all reasonable times.

(g) The mortgagor shall execute and deliver to the Commissioner a certificate that the books and accounts of the corporation will be established and maintained in a manner satisfactory to the Commissioner on the date the certificate is executed. Such certificate shall be to the effect that so long as the mortgage is insured by the Commissioner, the mortgagor's books and accounts will be kept in accordance with the requirements of the Commissioner, will be in such form as to permit a speedy and effective audit, and, as may otherwise be prescribed by the Commissioner, will be maintained for such periods of time as may be prescribed by the Commissioner and will be available to the Commissioner and to the Comptroller General of the United States for such examination and audits as they may desire to make. The corporation shall file with the Commissioner and mortgagee the following reports verified by the signature of such officers of the corporation as the Commissioner may designate and in such form as prescribed by the Commissioner:

(1) Monthly or quarterly operating reports as and when required by the Commissioner;

(2) A semi-annual financial statement within sixty (60) days after the semi-annual period when required by the Commissioner;

(3) Annual reports prepared by a certified public accountant or an independent public accountant, within sixty (60) days after the end of each fiscal year;

(4) Specific answers to questions upon which information is desired from time to time relative to the operation and condition of the property and the status of the insured mortgage;

(5) Copies of minutes of stockholders' meetings certified to by the Secretary of the corporation, within thirty (30) days after such meetings and, when requested by the Commissioner, copies of minutes of directors' meetings.

§ 213.31 Exceptions and special provisions.

(a) A Public Mortgagor shall not be subject to regulation and restriction by the Commissioner with respect to matters set forth in §§ 213.24, 213.25, 213.29, and 213.30.

(b) If the mortgage is to be insured after completion of the improvements, the mortgagor shall not be subject to the requirement of § 213.27.

(c) In addition to the provisions of this part, the mortgagor of an Investor Project shall be subject to the provisions of § 207.19(b), (Rate of return), § 207.19 (e), (Rent and charges), and § 207.26, (Form of contract), of this chapter. Such mortgagor shall not be subject to the provisions of §§ 213.25, 213.30(d), and 213.34.

(d) If the mortgage to be insured covers Existing Construction, §§ 213.33, 213.34, 213.35, 213.36, and 213.38 shall not be applicable.

(e) The provisions of § 213.27 shall apply to the mortgage covering Existing Construction only where Commissioner required or approved repairs, improvements, alterations, and additions are involved and insured advances are to be made. In such cases, assurance of completion of the project shall be deemed to refer to assurance of completion of such repairs, improvements, alterations, and additions.

(f) The provisions of § 213.28 shall apply to the mortgage covering Existing Construction only to the extent that Commissioner required or approved repairs, improvements, alterations, and additions are involved and reference therein relating to contracts, subcontracts, and the construction of the project shall be deemed to refer to the construction of such repairs, improvements, alterations, and additions.

(g) The provisions of § 213.28 shall not apply to a mortgage covering Existing Construction which does not involve Commissioner required or approved repairs, improvements, alterations, and additions, except that as to such Existing Construction where the construction of the project or projects was commenced after September 23, 1959, inspection by the Commissioner and compliance with the provisions of section 212 of the Act relating to prevailing wage requirements shall be a prerequisite of mortgage insurance.

(h) The provisions of § 213.28 shall not apply to a supplementary loan covering the purchase of an existing community facility.

(i) Part 213 sections and portions of sections applicable to supplementary loans are: §§ 213.1 (a), (b), (f), (l), (m), and (n); 213.2; 213.3; 213.4; 213.6(d); 213.7 (l), and (m); 213.8; 213.9(a); 213.10; 213.18 (a), (b)(1), and (c); 213.27(e); 213.28 (a) through (f); and 213.39.

In the foregoing provisions, unless otherwise indicated:

(1) "mortgage" shall mean "supplementary loan."

(2) "mortgagee" shall mean "lender."

(3) "mortgagor" shall mean "borrower."

(4) "project" shall mean "improvements, repairs, or community facilities."

§ 213.32 Certificate of mortgagor regarding use of property for transient or hotel purposes.

The mortgagor shall certify under oath that, so long as the mortgage is insured, the mortgagor will not rent, permit the rental, or permit the offering for rental, of the housing, or any part thereof, covered by such mortgage for transient or hotel purposes. For the purpose of this certificate, rental for transient or hotel purposes shall mean (a) rental for any period less than 30 days, or (b) any rental, if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linen, and bellboy service.

Adjustment of Mortgage Amount

§ 213.33 Certification of cost requirements.

Prior to initial endorsement for insurance of a mortgage executed by the mortgagor of a management type project or the mortgagor of an investor sponsored project, the mortgagor, the mortgagee, and the Commissioner shall enter into an agreement in form and content satisfactory to the Commissioner for the purpose of precluding any excess of mortgage proceeds over statutory limitations. Under this agreement the mortgagor shall disclose its relationship with the builder, including any collateral agreement, and agree to enter into a construction contract the terms of which shall depend on whether or not there exists an identity of interest between the mortgagor and the builder. The agreement shall require that upon completion of all physical improvements on the mortgaged property the mortgagor must execute a certificate of actual costs. The agreement shall further require that any excess of mortgage proceeds over statutory limitations based on actual cost shall be applied to reduction of the outstanding balance of the principal of the mortgage.

§ 213.34 Form of contract.

The form of contract between the mortgagor of a Management Type Project and builder shall be determined in accordance with the following:

(a) *Non-identity of interest.* If it is found by the Commissioner that: (1) no identity of interest exists between the mortgagor or any of its officers, directors or stockholders and the general contractor, and (2) a cost plus form of contract is not required in the interests of the Commissioner; there may be used a lump sum form of contract.

(b) *Identity of interest.* If the Commissioner does not make the findings described in paragraph (a) of this section, the form of contract shall provide for payment of the actual cost of construction, not to exceed an upset price and may provide for payment of a specified

builder's fee in addition thereto. The builder's fee shall not exceed a reasonable allowance therefor as established by the Commissioner, in accordance with customary practices in the area.

(c) *Identity of interest—subcontractor.* If it is found by the Commissioner that an identity of interest exist between the mortgagor or any of its officers, directors or stockholders and any subcontractor or material supplier, the mortgagor and the general contractor must certify in a form prescribed by the Commissioner prior to final endorsement of the mortgage for insurance that the amounts paid to such subcontractor or material supplier were not more than the rate prevailing in the locality for similar type labor and materials.

§ 213.35 Certificate of actual cost.

The mortgagor's certificate of actual cost shall be submitted upon completion of physical improvements to the satisfaction of the Commissioner and prior to final endorsement. Its content and requirements regarding verification are as follows:

(a) When the work has been completed under a lump sum contract the mortgagor's certification shall be on the form prescribed therefor by the Commissioner and shall indicate the amount actually paid under the construction contract after deduction of any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor corporation, or to any of its officers, directors or stockholders; plus the cost to the mortgagor of architects' fees, off-site public utilities and streets not included in the general contract, organizational and legal work, and other items of expense approved by the Commissioner. For verification of these amounts the mortgagor shall keep and maintain adequate records of all costs of any construction or other cost items not representing work under the general contract and shall make available for examination such records, including any collateral agreements, upon request by the Commissioner.

(b) When the work has been completed under a cost plus contract the mortgagor's certification shall be on the form prescribed therefor by the Commissioner and shall indicate all amounts as required in paragraph (a) of this section, and such allocations of general overhead items as are acceptable to the Commissioner, plus a reasonable allowance for the builder's profit as established by the Commissioner. This form of certification shall be accompanied by a certification by the builder on the form prescribed therefor by the Commissioner, indicating all actual costs paid for labor, materials, and subcontract work under the general contract exclusive of the builder's fee and less any kickbacks, rebates, trade discounts, or other similar payments to the builder or mortgagor corporation or any of its officers, directors, or stockholders. The mortgagor shall keep and make available records as required in paragraph (a) of this section and shall in turn require the builder to keep available similar records.

(c) The certificates of actual cost shall be verified by an independent Certified Public Accountant or independent public accountant in a manner acceptable to the Commissioner.

§ 213.36 Adjustment resulting from cost certification.

Upon receipt of the mortgagor's certification of actual cost there shall be added to the total amount thereof the Commissioner's estimate of the fair market value of any land included in the mortgage security and owned by the mortgagor in fee, such value being prior to the construction of the improvements. In the event the land is held under a leasehold or other interest less than a fee, the cost, if any, of acquiring the leasehold or other interest is considered an allowable expense which may be added to actual cost, provided that in no event such amount is in excess of the fair market value of such leasehold or other interest exclusive of proposed improvements. If the principal obligation of the mortgage exceeds the approved percentage of this total amount, the mortgage shall be reduced by the amount of such excess prior to final endorsement for insurance.

§ 213.37 Rehabilitation projects.

In the event the mortgage is to finance repair or rehabilitation the mortgagor's actual cost of such repair or rehabilitation may include the items of expense permitted for new construction in accordance with either paragraph (a) or paragraph (b) of § 213.35 and the applicable cost certification procedure described therein will be required; provided such mortgage shall be subject to the following limitations:

(a) *Property held in fee.* If no part of the proceeds will be used to finance the purchase of the land or structures involved the mortgage shall be reduced to an amount not to exceed 100 percent of the approved cost of the completed repairs or rehabilitation.

(b) *Property subject to existing mortgage.* If the insured mortgage is to include the cost of refinancing an existing mortgage acceptable to the Commissioner, the amount of the existing mortgage or the approved percentage of the Commissioner's estimate of the fair market value, of land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds the total amount thus obtained, the mortgage shall be reduced by the amount of such excess, prior to final endorsement for insurance.

(c) *Property to be acquired.* If the mortgage is to include the cost of land and improvements, and the purchase price thereof is to be financed with part of the mortgage proceeds, the purchase price, or the Commissioner's estimate of the fair market value, of land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds the approved percentage of this amount, the mortgage shall be reduced by the amount of such excess, prior to final endorsement for insurance.

§ 213.38 Requisites of agreement and certification.

(a) Any agreement, undertaking, statement or certification required by § 213.35 shall specifically state that it has been made, presented, and delivered for the purpose of influencing an official action of the Federal Housing Administration, and of the Federal Housing Commissioner, and may be relied upon by the Commissioner as a true statement of the facts contained therein.

(b) Upon the Commissioner's approval of the mortgagor's certification as required by § 213.35 such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor.

ELIGIBLE MORTGAGEES AND LENDERS

§ 213.39 Qualifications.

The provisions of §§ 203.1 to 203.4, 203.6 to 203.9, and 203.51 through 203.54 of this chapter shall apply and govern the eligibility, qualifications and requirements of mortgagees and lenders under this subpart.

PROPERTY REQUIREMENTS

§ 213.40 Eligibility of property.

(a) A mortgage to be eligible for insurance shall be on real estate held:

(1) In fee simple; or

(2) On the interest of the lessee under a lease for not less than ninety-nine years which is renewable; or

(3) Under a lease having a period of not less than seventy-five years to run from the date the mortgage is executed; or

(4) Under a lease executed by a government agency, an Indian or an Indian tribe for the maximum term consistent with the legal authority for the execution of such lease, provided that the term of any such lease shall run for a period of not less than fifty years from the date the mortgage is executed.

(b) The property constituting security for the mortgage shall be held by an eligible mortgagor as herein defined and shall at the time the mortgage is insured be free and clear of all liens other than that of such mortgage except as otherwise provided in this subpart.

§ 213.42 Minimum number of units.

The project shall consist of not less than five dwelling units which may be detached, semidetached, or row house, or multifamily structures. In the case of a Sales Project, such units shall be single-family dwellings.

TITLE

§ 213.43 Eligibility of title.

In order for the mortgaged property to be eligible for insurance, the Commissioner must determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for record. The title evidence will be examined by the Commissioner and the original endorsement of the credit instru-

ment for insurance will be evidence of its acceptability.

cept as modified by this section shall be eligible for insurance under this part.

such insurance shall be issued without regard to any preferences or priorities

221, 608 or 908 of the National Housing Act shall be eligible for insurance under

ment for insurance will be evidence of its acceptability.

§ 213.44 Title evidence.

Upon insurance of the mortgage, the mortgagee, without expense to the Commissioner, shall furnish to the Commissioner a survey satisfactory to him and a policy of title insurance, as provided in paragraph (a) of this section, or, if the mortgagee is unable to furnish such policy for reasons satisfactory to the Commissioner, the mortgagee, without expense to the Commissioner, shall furnish such evidence of title as provided in paragraphs (b), (c), or (d) of this section, as the Commissioner may require.

(a) A policy of title insurance with respect to such mortgage, issued by a company satisfactory to the Commissioner. Such policy shall comply with the "L. I. C. Standard Mortgagee Form," or the "A. T. A. Standard Mortgagee Form," or such other form as may be approved by the Commissioner; shall be payable to the mortgagee and the Commissioner as their respective interests may appear; and shall become an owner's policy, running to the mortgagee as owner upon the acquisition of the property by the mortgagee in extinguishment of a debt through foreclosure or by other means, and to the Commissioner as owner upon the acquisition of the property by him pursuant to the mortgage insurance contract.

(b) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

(c) A Torrens or similar title certificate.

(d) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or Territory thereof.

OTHER ELIGIBLE MORTGAGES

§ 213.45 Eligibility of miscellaneous type mortgages.

(a) A mortgage executed by a mortgagor of a Management Type project covering five or more units and which meets the requirements of this part, except as modified by this section shall be eligible for insurance under this part.

(b) The mortgage may be accepted for insurance if—

(1) Executed in connection with the sale by the Government, or any agency or official thereof, of any housing acquired or constructed under Public Law 849, Seventy-sixth Congress, as amended; Public Law 781, Seventy-sixth Congress, as amended; or Public Laws 9, 73, or 353, Seventy-seventh Congress, as amended (including any additional property acquired, held, or constructed in connection with such housing or to serve the inhabitants thereof); or

(2) Executed in connection with the sale by the Public Housing Administration, or by any public housing agency with the approval of the said Administration, of any housing (including any additional property acquired, held, or constructed in connection with such housing or to serve the inhabitants thereof) owned or financially assisted pursuant to the provisions of Public Law 671, Seventy-sixth Congress; or

(3) Executed in connection with the sale by the Government, or any agency or official thereof, or any of the so-called Greenbelt towns, or parts thereof, including projects, or parts thereof, known as Greenhills, Ohio; Greenbelt, Maryland; and Greendale, Wisconsin, developed under the Emergency Relief Appropriation Act of 1935; or of any of the village properties or employee's housing under the jurisdiction of the Tennessee Valley Authority; or of any housing under the jurisdiction of the Department of the Interior located within the town area of Coulee Dam, Washington, acquired by the United States for the construction, operation, and maintenance of Grand Coulee Dam and its appurtenant works or of any permanent housing under the jurisdiction of the Department of the Interior constructed under the Boulder Canyon Project Act of December 21, 1928, as amended and supplemented, located within the Boulder City municipal area; or

(4) Executed in connection with the sale by the Government, or any agency or official thereof, of any housing (including any property acquired, held, or constructed in connection therewith or to serve the inhabitants thereof) pursuant to the Atomic Energy Community Act of 1955, as amended: *Provided*, That such insurance shall be issued without regard to any preferences or priorities except those prescribed by the National Housing Act or the Atomic Energy Community Act of 1955, as amended; or

(5) Executed in connection with the sale by a State or municipality, or an agency, instrumentality, or political subdivision of either, of a project consisting of any permanent housing (including any property acquired, held or constructed in connection therewith or to serve the inhabitants thereof), constructed by or on behalf of such State, municipality, agency, instrumentality or political subdivision, for the occupancy of veterans (as defined in § 203.12 of this chapter) their families and others: *Provided*, That in no case may the principal obligation of a mortgage referred to in this subparagraph exceed 90 percent of the appraised value of the mortgaged property; or

(6) Executed in connection with the first resale, within two years from the date of its acquisition from the Government, of any portion of a project or property of the character described in subparagraphs (1), (2), (3), and (4) of this paragraph.

(c) [Reserved]

(d) Notwithstanding any other provisions of this subpart a mortgage executed by a mortgagor of a Management Type project bearing interest as provided in § 213.510, given to refinance a mortgage insured under sections 220, 221, 608 or 908 of the National Housing Act shall be eligible for insurance under this section, if the principal amount of such new mortgage does not exceed the original principal amount, and the term does not exceed the unexpired term of such existing mortgage; except that in any case in which the Commissioner determines that the insurance of a mortgage for an additional term will inure to the benefit of the applicable insurance fund, taking into consideration the outstanding insurance liability under the existing insured mortgage, the new mortgage may have a term of not more than 12 years in excess of the unexpired term of the existing insured mortgage.

(e) Notwithstanding any other provisions of this subpart, the Commissioner may insure any mortgage assigned to him in connection with payment under a contract of mortgage insurance, or executed in connection with a sale by him of any property acquired under Title II, Title VI, Title VII, Title VIII, or Title IX of the National Housing Act without regard to any limitation upon eligibility contained in this subpart.

EFFECTIVE DATE

§ 213.100 Effective date.

Unless otherwise specified, the provisions of this subpart are effective as to all mortgages on which a commitment to insure is issued on or after September 23, 1959.

Subpart B—Contract Rights and Obligations—Projects

§ 213.251 Incorporation by reference.

(a) All of the provisions of Part 207 of this subchapter covering mortgages insured under section 207 of the National Housing Act, apply with full force and effect to mortgages insured under section 213 of the National Housing Act, except the following provisions:

Sec.
207.251 Definitions.
207.252 First, second and third premiums.
207.253 Adjusted premium charge.
207.254 Form of endorsement.
207.264 Effective date.

(b) For the purposes of this subpart all references in Part 207 of this chapter to section 207 of the National Housing Act shall be deemed to refer to section 213 of the Act.

(c) The provisions of §§ 207.255, 207.256, 207.257, 207.261, 207.262 and 207.263 of this chapter shall apply to supplementary loans insured under section 213(j) of the Act. In connection with the foregoing provisions the terms "mortgagor", "mortgagee", "mortgage" shall be construed to mean "borrower", "lender", and "supplementary loan, including required security instrument".

(d) Where the provisions of this subpart are applicable to supplementary loans, the terms "mortgagor", "mortgagee", "mortgage", shall be construed to mean "borrower", "lender", and "supplementary loan, including required security instrument".

§ 213.252 Definitions.

The definitions contained in § 213.1 shall apply to this subpart and in addition the following terms shall have the meaning indicated.

(a) "Contract of Insurance" means the agreement evidenced by endorsement of the credit instrument by the Commissioner or his duly authorized representative and includes the terms, conditions and provisions of this subpart and of the National Housing Act.

(b) "Insured mortgage" means a mortgage which has been insured by the endorsement of the credit instrument by the Commissioner.

(c) "Mortgage" means such a first lien upon real estate and other property as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the State, district or territory in which the real estate is located, together with the credit instrument or instruments, if any, secured thereby.

(d) "Mortgagee" means the original lender under a mortgage, its successors and such of its assigns as are approved by the Commissioner, and includes the holders of the credit instruments issued under a trust indenture, mortgage or deed of trust pursuant to which such holders act by and through a trustee therein named.

(e) "Mortgagor" means the original borrower under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

(f) "Project Mortgage" means a blanket mortgage insured under section 213 of the Act, covering a group of not less than five single-family dwellings.

§ 213.253 Mortgage premiums upon initial endorsement and premiums for consolidated supplementary loans.

(a) *Management and Sales Types and Investor Sponsored Projects.* The mortgagee, upon the initial endorsement of the mortgage for insurance, shall pay to the Commissioner a first mortgage insurance premium equal to one-half of one percent of the original face amount of the mortgage.

(b) *Purchasing cooperatives.* The provisions of paragraph (a) of this section do not apply to the mortgage of a purchasing nonprofit cooperative housing corporation or trust where such mortgage is endorsed for insurance pursuant to the sale of an Investor Sponsored Project to such purchasing nonprofit cooperative housing corporation or trust.

(c) *Existing Construction.* The provisions of paragraph (a) shall apply to a mortgage covering Existing Construction which involves insurance of advances for Commissioner approved or required repairs, improvements, alterations and additions.

(d) *Supplementary loan; exception.* The provisions of paragraph (a) shall apply to any supplementary loan except a supplementary loan to finance the acquisition of an existing community facility.

§ 213.254 Premiums where first principal payment more than one year after initial endorsement.

(a) *Management and Sales Types and Investor Sponsored Projects.* (1) If the date of the first principal payment is more than one year following the date of such initial insurance endorsement, the mortgagee, upon the anniversary of such insurance date, shall pay a second premium equal to one-half of one percent of the original face amount of the mortgage. On the date of the first principal payment, the mortgagee shall pay a third premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the first, second and third premiums shall equal the sum of (i) one percent of the average outstanding principal obligation of the mortgage for the year following the date of initial insurance endorsement, and (ii) one-half of one percent per annum of the average outstanding principal obligation of the mortgage for the period from the first anniversary of the date of initial insurance endorsement to one year following the date of the first principal payment.

(2) If the date of the first principal payment of a mortgage is more than one year following the date of the initial insurance endorsement and the mortgage is paid in full prior to the date of such first principal payment, the first and second premiums collected shall be adjusted so that the aggregate of the two premiums shall equal the sum of (i) one percent of the average outstanding principal obligation of the mortgage for the year following the date of the initial insurance endorsement, and (ii) one-half of one percent per annum of the average outstanding principal obligation of the mortgage for the period from the first anniversary of the date of initial endorsement to the date the mortgage was paid in full.

(b) *Purchasing cooperatives.* The provisions of paragraph (a) of this section do not apply to the mortgage of a purchasing nonprofit cooperative housing corporation or trust where such mortgage is endorsed for insurance pursuant to the sale of an Investor Sponsored Project to such purchasing nonprofit cooperative housing corporation or trust.

(c) *Existing Construction.* The provisions of paragraph (a) shall apply to a mortgage covering Existing Construction which involves insurance of advances for Commissioner approved or required repairs, improvements, alterations and additions.

(d) *Supplementary loan; insurance of advances.* The provisions of paragraph (a) shall apply to any supplementary loan involving insurance of advances.

§ 213.255 Premiums where first principal payment one year or less after initial endorsement.

(a) *Management and Sales Types and Investor Sponsored Projects.* (1) If the date of the first principal payment is one year, or less than one year following the date of such initial insurance endorsement, the mortgagee, upon such first principal payment date, shall pay a second premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the first and second premiums shall equal the sum of (i) one percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of initial insurance endorsement to the date of first principal payment, and (ii) one-half of one percent of the average outstanding principal obligation of the mortgage for the year following the date of the first principal payment.

(2) If the date of the first principal payment of a mortgage is one year or less than one year following the date of the initial insurance endorsement and the mortgage is paid in full prior to the date of such first principal payment, the first and only premium collected shall be adjusted so that the total premium shall equal one percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of initial insurance endorsement to the date the mortgage was paid in full.

(b) *Purchasing cooperatives.* The provision of paragraph (a) of this section do not apply to the mortgage of a purchasing nonprofit cooperative housing corporation or trust where such

mortgage is endorsed for insurance pursuant to the sale of an Investor Sponsored Project to such purchasing nonprofit cooperative housing corporation or trust.

(c) *Existing Construction.* The provisions of paragraph (a) shall apply to a mortgage covering Existing Construction which involves insurance of advances for Commissioner approved or required repairs, improvements, alterations and additions.

(d) *Supplementary loan; insurance of advances.* The provisions of paragraph (a) shall apply to a supplementary loan involving insurance of advances.

§ 213.256 Premiums; insurance upon completion.

(a) *Management and Sales Types and Investor Sponsored Projects.* (1) Where the mortgage is initially and finally endorsed for insurance pursuant to a Commitment to Insure Upon Completion, the mortgagee on the date of the first principal payment shall pay a second premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the year following such first principal payment date which shall be adjusted so as to accord with such date and so that the aggregate of the first and second premiums shall equal the sum of one-half of one percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of the insurance endorsement to one year following the date of the first principal payment.

(2) Where the mortgage is initially and finally endorsed for insurance pursuant to a Commitment to Insure Upon Completion and is paid in full prior to the date of the first principal payment, the first and only premium collected shall be adjusted so that the total premium shall equal one-half of one percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of the insurance endorsement to the date the mortgage was paid in full.

(b) *Purchasing cooperatives.* The provisions of paragraph (a) of this section do not apply to the mortgage of a purchasing nonprofit cooperative housing corporation or trust where such mortgage is endorsed for insurance pursuant to the sale of an Investor Sponsored Project to such purchasing nonprofit cooperative housing corporation or trust.

(c) *Existing Construction.* The provisions of paragraph (a) shall apply to Existing Construction not involving insurance of advances but involving Commissioner approved or required repairs, improvements, alterations and additions.

(d) *Supplementary loan; Commitment to Insure Upon Completion.* The provisions of paragraphs (a) and (b) shall apply to a supplementary loan endorsed for insurance pursuant to a Commitment to Insure Upon Completion.

§ 213.257 Premiums; purchasing cooperatives; Existing Construction; supplementary loans to purchase existing community facility.

(a) Where a mortgage is endorsed for insurance pursuant to the sale of an Investor Sponsor Project or covers Existing Construction not involving Commissioner approved or required repairs, improvements, alterations and additions, the mortgagee, on the date of the insurance endorsement, shall pay a first premium equal to one-half of one percent of the principal obligation of the mortgage for the period from the date of the insurance endorsement to one year following the date of the first principal payment. On the anniversary of the first principal payment, this first premium shall be adjusted to equal one-half of one percent of the average outstanding principal obligation of the mortgage for the period from the date of the insurance endorsement to one year following the date of the first principal payment.

(b) The premium provisions of paragraph (a) shall apply to a supplementary loan to purchase an existing community facility.

§ 213.258 Subsequent annual premiums.

(a) Until the mortgage is paid in full, or until an application for debentures is received by the Commissioner or until the contract of insurance is otherwise terminated with the consent of the Commissioner, the mortgagee, on each anniversary of the due date of the first principal payment shall pay an annual mortgage insurance premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the year following the date on which such premium becomes payable.

(b) The provisions of paragraph (a) shall apply to supplementary loans.

§ 213.259 Computation of subsequent annual premiums.

The premiums payable on and after the date of the first principal payment shall be calculated in accordance with the amortization provisions without taking into account delinquent payments or prepayments.

§ 213.260 Allowable methods of premium payment.

Premiums shall be payable in cash or in debentures issued by the Commissioner against the Housing Insurance Fund under Title II of the Act at par plus accrued interest. All premiums are payable in advance and no refund can be made of any portion thereof except as hereinafter provided in this part.

§ 213.261 Termination of mortgage insurance; adjusted premium and termination charge.

(a) All rights under the mortgage insurance contract and all obligations to pay future mortgage insurance premiums shall terminate on the following conditions:

(1) Payment to the Commissioner of an adjusted premium or termination charge computed as follows:

(i) Two percent of the original face amount of the mortgage where the mortgage is prepaid or the mortgage insurance is terminated prior to maturity and within five years from the date of the initial endorsement for insurance; or

(ii) One percent of the original face amount of the mortgage where the mortgage is prepaid or the mortgage insurance is terminated prior to maturity and after five years from the date of initial endorsement for insurance; or

(iii) The relevant percentage as set forth in subdivisions (i) or (ii) of this subparagraph applied to the difference between the original face amount of the mortgage and the aggregate face amount of a new mortgage or mortgages, if at the time of prepayment:

(*a*) The insured mortgage is paid in full with or from the proceeds of a new insured mortgage, or mortgages having an aggregate amount less than the original principal amount of the mortgage on the same property; or

(*b*) The Commissioner has accepted an adjusted premium charge under an agreement providing that if new insured mortgages are placed on part or all of the property, within a period of time not to exceed one year from the date of prepayment, the adjusted premium charge previously collected will be refunded in whole or in part. In the event of the acceptance of such agreement the refund, if any, shall be computed only after the termination of the agreement or after the sale of all property or properties, whichever occurs first, and no refund shall be made prior to such computation.

(2) Notice within 30 days of prepayment in full or of a written agreement consented to by the Commissioner between the mortgagor and mortgagee terminating the insurance coverage on the mortgage; and

(3) Such further evidence of prepayment in full or termination and cancellation of insurance as the Commissioner may require.

(b) No adjusted premium shall be collected where a mortgage is paid in full prior to maturity as a result of the release of individual properties of a Sales Project Mortgage or the sale of an Investor Sponsor Project to a Purchasing Cooperative, or where a supplementary loan is paid in full or terminated prior to maturity with the consent of the Commissioner.

§ 213.262 Charge limitation.

In no event shall the adjusted premium charge or termination charge exceed the aggregate amount of premium charges which would have been payable if the mortgage had continued to be insured until maturity.

§ 213.263 Where no adjusted premium charge is due.

(a) *Management, Investor and Purchasing Cooperative Projects, and Existing Construction.* No adjusted premium charge shall be due the Commissioner in the following cases:

(1) Where, at the time of payment in full, there is placed on the mortgaged property a new insured mortgage or mortgages for an amount equal to or greater than the original principal amount of the prepaid mortgage; or

(2) Where the final maturity specified in the mortgage is accelerated solely by reason of partial prepayments made by the mortgagor which do not exceed in any one calendar year 15 percent of

the original face amount of the mortgage; or

(3) Where the final maturity specified in the mortgage is accelerated solely by reason of payments to principal to compensate for damage to the mortgaged property, or a release of a part of such property, if approved by the Commissioner; or

(4) Where payment in full is made of a delinquent mortgage on which foreclosure proceedings have been commenced, or for the purpose of avoiding foreclosure, if the Commissioner, in his discretion, agrees in writing to waive the payment thereof; or

(5) Where, at the time of payment in full, there is placed on the property a new insured mortgage or mortgages less than the original principal amount of the prepaid mortgage: *Provided*, That the Commissioner finds that the collection of such charge would be inequitable under the particular circumstances of the transaction.

(b) *Sales Type Projects.* The provisions of paragraph (a) of this section do not apply to mortgages covering Sales Type Projects.

§ 213.264 Contract termination upon payment in full.

In the event the principal obligation of any mortgage or supplementary loan is paid in full or terminated prior to maturity with the consent of the Commissioner the contract of insurance shall terminate.

§ 213.265 Refunds upon prepayment in full or voluntary termination.

(a) At the time of prepayment or voluntary termination of the mortgage or supplementary loan insurance contract, the Commission shall refund to the mortgagee or lender for the account of the mortgagor or borrower an amount equal to the pro rata portion of the current annual mortgage or supplementary loan insurance premium theretofore paid, which is applicable to the portion of the year subsequent to the date of (1) prepayment or (2) receipt by the Commissioner of a request for voluntary termination.

(b) Where a mortgage covering an Investor Sponsored project is modified and consolidated with the mortgage of a purchasing nonprofit cooperative housing corporation or trust, it shall be deemed to be paid in full for purposes of this subpart as of the date of such modification and consolidation.

§ 213.266 Form of endorsement.

Upon compliance satisfactory to the Commissioner with the terms and conditions of his commitment to insure, the Commissioner shall endorse the original credit instrument in form as follows:

No. ------

Insured under section 213 of the National Housing Act and regulations thereunder of the Federal Housing Commissioner in effect on ---------- to the extent of advances approved by the Commissioner.

FEDERAL HOUSING COMMISSIONER

By ----------
(Authorized agent)

Date ----------

§ 213.267 Effect of insurance endorsement.

The mortgage shall be an insured mortgage from the date of endorsement. The Commissioner and the mortgagee shall thereafter be bound by this subpart with the same force and to the same extent as if a separate contract had been executed relating to the insured mortgage, including the provisions of this subpart and of the Act.

§ 213.268 Notation after all advances made.

After all advances under the mortgage have been made with the approval of the Commissioner, the Commissioner shall, upon presentation of original credit instrument, make a notation below the insurance endorsement in form as follows:

A total sum of $------ has been approved for insurance hereunder by the Commissioner.

FEDERAL HOUSING COMMISSIONER

By ----------
(Authorized agent)

Date ----------

§ 213.269 Endorsement of supplementary loans.

The provisions of §§ 213.266, 213.267, and 213.268 shall apply to supplementary loans.

§ 213.270 Supplementary loans; election of action; claims; debentures.

(a) *Election of action.* Where a real estate mortgage, deed of trust, conditional sales contract, chattel mortgage, lien, judgment, or any other security device has been used to secure the payment of a loan made under the provisions of this section, the lender may not, except with the approval of the Commissioner, both proceed against such security and also make claim under its contract of insurance, but shall elect which method it desires to pursue.

(b) *Maximum claim period.* Notice of intention to file claim on a form prescribed by the Commissioner shall be filed within 45 days after the lender becomes eligible for the benefits of the loan insurance, or within such later time as may be agreed upon by the Commissioner in writing.

(c) *Items to be filed on submitting claim.* Within 30 days after the filing of the notice of intention to file claim, or within such further period as may be agreed upon by the Commissioner in writing, the lender shall file with the Commissioner:

(1) The fiscal data pertaining to the loan transaction;

(2) Receipts covering all disbursements as required by the fiscal data form;

(3) The original note and any security instrument or instruments which shall be assigned to the Commissioner without recourse or warranty, except that the lender must warrant that no act or omission of the lender has impaired the validity and priority of such security instrument or instruments, that the security instrument or instruments are prior to all mechanics' and materialmen's liens filed of record subsequent to the recording of such security instrument or instruments regardless of whether such liens attached prior to such recording date, and prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to the recording of such security instrument or instruments, except such liens or other matters as may be approved by the Commissioner, that the amount stated in the instrument of assignment is actually due and owing under the security instrument or instruments, that there are no offsets or counterclaims thereto, and that the lender has a good right to assign such note and security instrument or instruments;

(4) All hazard insurance policies held on property serving as security for the loan or other evidence of insurance coverage acceptable to the Commissioner, together with a copy of the lender's notification to the carrier authorizing the amendment of the loss payable clause substituting the Commissioner as the holder of the security instrument;

(5) The assignment to the Commissioner of all rights and interests arising under the note and security instrument or instruments so in default, and all claims of the lender against the borrower or others arising out of the loan transaction;

(6) All policies of title or other insurance or surety bonds, or other guarantees and any and all claims thereunder; including evidence satisfactory to the Commissioner that the original title coverage has been extended to include the assignment of the note and the security instrument or instruments to the Commissioner;

(7) Any balance of the loan not advanced to the borrower;

(8) Any cash or property held by the lender or its agents or to which it is entitled; including deposits made for the account of the borrower and which have not been applied in reduction of the principal obligation under the note and security instrument or instruments;

(9) All records, ledger cards, documents, books, papers and accounts relating to the loan transaction;

(10) Any additional information or data which the Commissioner may require.

(d) *Claim computation.* Upon an acceptable assignment of the note and security instrument, the Commissioner shall pay the claim of the lender in debentures of the Housing Insurance Fund an amount equal to the unpaid principal balance of the supplementary loan plus:

(1) Any accrued interest due on the supplementary loan;

(2) Any advance made previously under the provisions of the loan instrument and approved by the Commissioner;

(3) Reimbursement for such reasonable collection costs, court costs, and attorney's fees as may be approved by the Commissioner.

(e) *Debenture interest.* The debentures shall bear interest as provided in § 207.259(a)(1)(vii).

(f) *Maturity of debentures.* Deben-

deemed at par and accrued interest on

Subpart C—Eligibility Require-

writing by the Commissioner) on which the Commissioner has based the maxi-

(f) *Maturity of debentures.* Debentures shall mature 20 years from the date of issue.

(g) *Registration of debentures.* Debentures shall be registered as to principal and interest.

(h) *Denomination of debentures.* Debentures shall be issued in multiples of $50 and any difference not in excess of $50 between the amount of debentures to which the lender is otherwise entitled hereunder and the aggregate face value of the debentures issued shall be paid in cash by the Commissioner to the lender.

(i) *Redemption of debentures.* Debentures shall, at the option of the Commissioner and with the approval of the Secretary of the Treasury, be redeemed at par and accrued interest on any interest payment date on three months' notice of redemption given in such manner as the Commissioner shall prescribe.

(j) *Issue date of debentures.* The debentures shall be issued as of the date of the execution of the assignment of the supplementary loan in accordance with the requirements of paragraph (c)(3) of this section.

§ 213.350 Effective date.

Unless otherwise specified, the provisions of this subpart are effective as to all mortgages on which a commitment to insure is issued on or after September 23, 1959.

Subpart C—Eligibility Requirements—Individual Properties Released From Project Mortgage

Definitions

§ 213.501 Definitions.

(a) The term "project mortgage" means a blanket mortgage insured under section 213 of the Act, covering a group of not less than five single-family dwellings.

(b) The terms "mortgage" and "individual mortgage" mean a mortgage covering an individual single-family dwelling which has been released from the project mortgage.

(c) The definitions contained in § 213.1 of this subchapter shall apply to this subpart.

Approval of Mortgagees

§ 213.502 Qualification of lenders.

The provisions of §§ 203.1 to 203.4 and 203.6 to 203.9 of this chapter shall govern the eligibility, qualifications and requirements of mortgages under this subpart.

Application and Commitment

§ 213.503 Submission of application.

Any approved mortgagee may submit an application for insurance of a mortgage under this subpart.

§ 213.504 Form of application.

The application must be made upon a standard form prescribed by the Commissioner.

§ 213.505 Approval and commitment.

Upon approval of an application, acceptance of the mortgage for insurance will be evidenced by the issuance of a commitment setting forth, upon a form prescribed by the Commissioner, the terms and conditions upon which the mortgage will be insured.

§ 213.506 Builders warranty.

The seller or builder or such other person as the Commissioner may require shall, as a prerequisite to insurance, deliver to the purchaser a warranty in form satisfactory to the Commissioner warranting that the dwelling is constructed in substantial conformity with the plans and specifications (including amendments thereof or changes and variations therein which have been approved in writing by the Commissioner) on which the Commissioner has based the maximum insurable mortgage amount.

Eligible Mortgages

§ 213.507 Form, lien.

The mortgage must be executed upon a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated, by a mortgagor with the qualifications set forth in this part, must be a first lien upon property that conforms with the property standards prescribed by the Commissioner, and the entire principal amount of the mortgage must have been disbursed to the mortgagor, or to his creditors for his account and with his consent.

§ 213.508 Releases from project mortgage.

The property covered by the mortgage must have been included as part of a Sales Project and must have located thereon a single-family dwelling, and the mortgage must have been executed in connection with the release of such property from the lien of the project mortgage and to replace or refinance the project mortgage as to such property.

§ 213.509 Maximum amount of mortgage and mortgagor's minimum investment.

(a) The mortgage must involve a principal obligation in multiples of $50 and must not exceed the unpaid balance of the project mortgage allocable to the property offered as security.

(b) *Mortgagor's minimum investment.* At the time the mortgage is insured the mortgagor shall have paid on account of the property in cash or its equivalent, an amount, if any, approved and determined by the Commissioner to be the required minimum investment. The mortgagor's cash investment in the mortgagor corporation under the project mortgage may be credited against the amount required by this paragraph. If the mortgage covers property released from a Sales Project, the blanket mortgage of which was insured pursuant to an application received on or after July 5, 1961, the required minimum investment shall be at least 3 percent of the Commissioner's estimate of cost of acquisition or such larger amount as the Commissioner may determine.

§ 213.510 Payment and maturity dates.

The mortgage shall come due on the first of the month and must have a maturity satisfactory to the Commissioner not to exceed 40 years from the date of the beginning of amortization except if the mortgage covers property released from a Sales Project, the blanket mortgage of which was insured pursuant to an application received on or after July 5, 1961, the maturity shall not exceed 35 years from the beginning of amortization. The amortization period shall be either 10, 15, 20, 25, 30, 35 or 40 years (where eligible) by providing for 120, 180, 240, 300, 360, 420 or 480 (where eligible) monthly amortization payments.

§ 213.511 Maximum interest rate.

(a) The mortgage may bear interest at such rates as may be agreed upon by the mortgagee or mortgagor but in no case shall such interest rate exceed:

(1) 5¾ percent with respect to mortgages endorsed for insurance pursuant to applications received by the Commissioner before February 2, 1961, or

(2) 5½ percent with respect to mortgages endorsed for insurance pursuant to applications received by the Commissioner on or after February 2, 1961, or

(3) 5¼ percent with respect to mortgages endorsed for insurance pursuant to applications received by the Commissioner on or after May 29, 1961.

(b) Interest shall be payable in monthly installments on the principal then outstanding.

§ 213.512 Amortization provisions.

The mortgage must contain complete amortization provisions satisfactory to the Commissioner, requiring monthly payments by the mortgagor sufficient to repay principal and interest in full at maturity.

§ 213.513 Payment of insurance premiums or charges; prepayment premiums.

The mortgage may provide for monthly payments by the mortgagor to the mortgagee of an amount equal to one-twelfth (1/12) of the annual mortgage insurance premium payable by the mortgagee to the Commissioner. If the mortgage contains a provision permitting the holder to make future "open-end" advances or is amended or modified to include such a provision, the mortgage may provide for a monthly payment by the mortgagor of an amount equal to one-twelfth (1/12) of the annual charge, payable by the mortgagee to the Commissioner for insurance of such advances. Such payments shall continue only so long as the contract of insurance shall remain in effect. The mortgage shall provide that upon payment of the mortgage before maturity, the mortgagor shall pay the adjusted premium charge referred to in this part, but shall not provide for the payment of any further charge on account of such prepayment.

§ 213.514 Payments to include other charges.

(a) The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize the ground rents, if any, and the estimated amount of all taxes, special assessments, if any, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become delinquent. The mortgage shall further provide that such payments shall be held by the mortgagee in a manner satisfactory to the Commissioner, for the purpose of paying such ground rents, taxes, assessments, and insurance premiums, before the same become delinquent, for the benefit and account of the mortgagor. The mortgage must also make provision for adjustments in case the estimated amount of such taxes, assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor.

(b) Mortgages involving an original principal obligation not in excess of $9,000 may contain a provision requiring the mortgagor to pay to the mortgagee an annual service charge at such rate as may be agreed upon between the mortgagee and the mortgagor, but in no case shall such service charge exceed one-half of one percent per annum. Any such service charge shall be payable in monthly installments on the principal then outstanding. The provisions of this paragraph shall not apply to mortgages endorsed for insurance pursuant to applications received by the Commissioner on or after July 17, 1961.

§ 213.515 Payments, how applied.

All monthly payments to be made by the mortgagor to the mortgagee, as hereinabove provided, shall be added together and the aggregate amount thereof shall be paid by the mortgagor each month in a single payment. The mortgagee shall apply the same to the following items in the order set forth:

(a) Premium charges under the contract of insurance, including charges for "open-end" advances;

(b) Ground rents, taxes, special assessments, and fire and other hazard insurance premiums;

(c) Interest on the mortgage; and

(d) Amortization of the principal of the mortgage.

Any deficiency in the amount of any such aggregate monthly payment shall, unless made good by the mortgagor prior to, or on, the due date of the next such payments, constitute an event of default under the mortgage.

§ 213.516 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed 2 cents for each dollar of each payment more than 15 days in arrears, to cover the extra expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

§ 213.517 Payments upon execution of mortgage.

The mortgagor must pay to the mortgagee upon the execution of the mortgage a sum that will be sufficient to pay the ground rents, if any, and the estimated taxes, special assessments, and fire and other hazard insurance premiums for the period beginning on the date to which such ground rents, taxes, assessments, and insurance premiums were last paid and ending on the date of the first monthly payment under the mortgage, and may be required to pay a further sum equal to the first annual mortgage insurance premium, plus an amount sufficient to pay the mortgage insurance premium from the date of closing the loan to the date of the first monthly payment.

§ 213.518 Maximum charges, fees or discounts.

(a) The mortgagee may collect from the mortgagor the following charges, fees or discounts:

(1) A charge to compensate the mortgagee for expenses incurred in originating and closing the loan, the charge not to exceed $20 or 1 percent of the original principal amount of the mortgage, whichever is the greater.

(2) Reasonable and customary amounts for any of the following items:

(i) Recording fees and recording taxes or other charges incident to recordation;

(ii) Credit Report;

(iii) Survey, if required by mortgagee or mortgagor;

(iv) Title examination; title insurance, if any;

(v) Such other reasonable and customary charges or fees as may be authorized by the Commissioner.

(b) [Reserved]

(c) Prior to insurance of any mortgage, the mortgagee shall furnish to the Commissioner a signed statement in form satisfactory to the Commissioner, listing all items for which any charge, fee or discount was collected by it, from the mortgagor, together with the amount of each such charge, fee or discount. The Commissioner's endorsement of the mortgage for insurance shall constitute approval of the listed charges, fees or discounts.

(d) Nothing in this section will be construed as prohibiting the mortgagor from dealing through a broker who does not represent the mortgagee, if he prefers to do so, and paying such compensation as is satisfactory to the mortgagor in order to obtain mortgage financing.

§ 213.519 Covenant regarding racial restrictions.

The mortgage shall contain a covenant by the mortgagor that until the mortgage has been paid in full, or the contract of insurance otherwise terminated, he will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the mortgaged property on the basis of race, color or creed. Such covenant shall be binding upon the mortgagor and his assigns and shall provide that upon violation thereof the mortgagee may, at its option, declare the unpaid balance of the mortgage immediately due and payable.

ELIGIBLE MORTGAGORS

§ 213.520 Mortgage lien.

A mortgagor must establish that after the mortgage offered for insurance has been recorded, the mortgaged property

will be free and clear of all liens other than such mortgage and that there will not be outstanding any other unpaid obligation contracted in connection with the mortgage transaction or the purchase of the mortgaged property, except obligations which are secured by property or collateral owned by the mortgagor independently of the mortgaged property.

§ 213.521 Relationship of income to mortgage payments.

A mortgagor must establish that the periodic payments required in the mortgage submitted for insurance bear a proper relation to his present and anticipated income and expenses.

§ 213.522 Credit standing.

A mortgagor must have a general credit standing satisfactory to the Commissioner.

§ 213.523 Racial restrictions certificate.

A mortgagor must certify that until the mortgage has been paid in full, or the contract of insurance otherwise terminated, he will not file for record any restriction upon the sale or occupancy of the mortgaged property on the basis of race, color or creed or execute any agreement, lease or conveyance affecting the mortgaged property which imposes any such restriction upon its sale or occupancy.

§ 213.524 Limitation on eligibility.

No person shall be eligible to be the mortgagor of more than one mortgage insured under this subpart at any one time, nor shall he be eligible if he is the mortgagor of a mortgage or mortgages covering four (4) or more single-family dwellings insured under this chapter.

ELIGIBLE PROPERTIES

§ 213.525 Nature of title to realty.

A mortgage to be eligible for insurance must be on real estate held in fee simple. or on leasehold under a lease for not less than 99 years which is renewable, or under a lease with a period of not less than 50 years to run from the date the mortgage is executed.

§ 213.526 Dwelling unit located on property.

At the time a mortgage is insured there must be located on the mortgaged property a dwelling unit designed principally for residential use for not more than one family. Such unit may be connected with other dwellings by a party wall or otherwise.

§ 213.529 Racial restrictions on property.

A mortgagee must establish that no restriction upon the sale or occupancy of the mortgaged property, on the basis of race, color or creed, has been filed of record at any time subsequent to February 15, 1950 and prior to the recording of the mortgage offered for insurance.

OPEN-END ADVANCES

§ 213.530 Eligibility of open-end advances.

Any approved mortgagee may make advances, referred to in this subpart as "open-end" advances, in connection with the mortgages previously insured under this subpart or insured after the effective date of this part, subject to compliance with the requirements of this section:

(a) The proceeds of any open-end advance must be used for the purpose of improvements or repairs which in the Commissioner's discretion substantially protect or improve the basic livability or utility of the property involved. The proceeds of such advances shall not be used for the purpose of financing obligations previously incurred for such repairs or improvements.

(b) The mortgagee shall submit an application for insurance of open-end advances upon a standard form prescribed by the Commissioner.

(c) Applications filed must be accompanied by the mortgagee's remittance for the sum of $10 for processing of the application. If an application is refused as a result of preliminary examination by the Commissioner or in such other instances as the Commissioner may determine the entire fee will be returned to the applicant.

(d) In addition to the application fee required by paragraph (c) of this section, the mortgagee may charge the mortgagor a fee not to exceed $25 or 1 percent of the open-end advance, whichever is the lesser, and the amount of out-of-pocket expenditures made by the mortgagee for customary costs of title search and recording fees. The mortgagee may require the mortgagor to pay to the mortgagee all charges permitted under this section on or prior to the date of final disbursement of the open-end advance, together with a sum sufficient to pay the initial insurance charge provided for in this part. No portion of such charges may be included in the principal amount of the open-end advance.

(e) Upon approval of an application, acceptance of the advance for insurance will be evidenced by the issuance of a commitment setting forth, upon a form prescribed by the Commissioner, the terms and conditions upon which the advance will be insured.

(f) The amount of such advance shall be added to the unpaid principal obligation of the mortgage, whereupon the aggregate of the original unpaid principal and the amount of the open-end advance shall:

(1) Bear interest at the rate provided in such mortgage, payable in monthly installments on the principal then outstanding;

(2) Be payable in substantially equal monthly payments in an amount sufficient to amortize the aggregate principal amount within the remaining original term of the mortgage.

(g) The amount of any such advance (computed in even dollar amounts) when added to the unpaid balance of the original principal obligation of the mortgage shall not exceed the original principal obligation of the mortgage: *Provided*, That if the mortgagor certifies that the proceeds of such open-end advance will be used to finance the construction of an additional room or rooms or other additional enclosed space as a part of the dwelling, the aggregate amount of the unpaid balance of the original principal obligation, plus the amount of the open-end advance, may exceed the amount of the original principal obligation of the mortgage, but in no event shall such aggregate amount exceed the maximum amounts prescribed by the limitations of § 213.509.

(h) A mortgagee may amend or modify any approved FHA mortgage form by adding such provisions as it deems necessary for the purpose of making open-end advances, by any rider or modification agreement which is valid and enforceable in the jurisdiction in which the property covered by the mortgage is located, provided such rider or modification agreement retains in the mortgagee the right to approve or disapprove additional advances on such terms and conditions as the mortgagee may prescribe. The mortgagee will have the sole responsibility for determining that any mortgage amended by an "open-end" rider or modification agreement will be a valid and enforceable instrument and will constitute a valid first lien on the property upon which the Commissioner based his valuation.

EFFECTIVE DATE

§ 213.600 Effective date.

Unless otherwise specified, the provisions of this subpart are effective as to all mortgages on which a commitment to insure is issued on or after September 23, 1959.

Subpart D—Contract Rights and Obligations—Individual Properties Released From Project Mortgage

§ 213.751 Incorporation by reference.

(a) *Definitions.* All of the definitions contained in § 213.1 shall apply to this subpart.

(b) *Other provisions.* All of the provisions of Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to mortgages insured under section 213 of the National Housing Act except the following provisions:

Sec.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.
203.422 Right and liability under Mutual Mortgage Insurance Fund.
203.423 Distribution of distributive shares.
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.
203.435 Form of assignment to investing mortgagee.
203.440—203.493, inclusive.

(c) *References.* For the purpose of this subpart all references in Part 203 of this chapter to section 203 of the Act shall be construed to refer to section 213 of the Act and all references to the Mutual Mortgage Insurance Fund shall be construed to refer to the Housing Insurance Fund.

SUBCHAPTER F—URBAN RENEWAL HOUSING INSURANCE AND INSURED IMPROVEMENT LOANS

PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

Subpart A—Eligibility Requirements—Homes

HOME MORTGAGE INSURANCE

Sec.
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220.5 Location of property.
220.10 Certificate by Administrator to Commissioner.
220.15 Standards and conditions of acceptability.
220.20 Dwelling units on property.
220.25 Maximum mortgage amounts; dollar limitation.
220.30 Maximum mortgage amount; loan-to-value limitation.
220.35 Mortgagor's minimum investment.
220.40 Rental properties
220.45 Certificates of appraisal and replacement amounts.
220.50 Maximum charges, fees and discounts.

INSURED HOME IMPROVEMENT LOANS

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220.102 Type and location of property.
220.200 Effective date.

Subpart B—Contract Rights and Obligations—Homes

220.251 Incorporation by reference.
220.252 Forbearance of foreclosure and assignments of mortgages.
220.260 Conditions for withdrawal of application for insurance benefits.
220.261 Reconveyance for noncompliance with regulations.
220.262 Mortgagee's liability for property expenditures.
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220.266 Adjustment for waste.
220.267 Adjustment for fire, flood, earthquake or tornado damage.
220.270 Cancellation of hazard insurance.
220.275 Payment of insurance benefits.
220.276 Insurance benefits computation—conveyed properties.
220.277 Insurance benefits computation—conveyed properties; items included.
220.278 Insurance benefits computation—conveyed properties; items deducted.
220.279 Insurance benefits computation—assigned mortgages.
220.285 Delivery of certificate of claim.
220.286 Amount and items of certificate of claim.

INSURED HOME IMPROVEMENT LOANS

220.350 Incorporation by reference.
220.351 Claim computation.
220.450 Effective date.

Subpart C—Eligibility Requirements—Projects

PROJECT MORTGAGE INSURANCE

220.501 Incorporation by reference.
220.502 Location of property.
220.503 Certificate by Administrator to Commissioner.
220.504 Standards and conditions of acceptability.
220.505 Issuance of commitment.
220.506 Development of property.
220.507 Maximum mortgage amounts.
220.508 Maximum mortgage amount—loan-to-value limitation.
220.509 Maximum mortgage amount—leaseholds.
220.510 Interest rate.
220.511 Labor standards and prevailing wage requirements.
220.512 Classification of mortgagors.
220.513 Builder's and sponsor's profit and risk allowance.
220.514 Effective date.

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220.550 Definitions.
220.551 Submission of application.
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220.592 Late charge.

Sec.
Subpart D—Contract Rights and Obligations—Projects
Subpart A—Eligibility Requirements—Homes
Administrator and the Administrator has certified to the Commissioner that:
(a) The redevelopment plan or the

Sec.
220.593 Certificate regarding use for transient or hotel purposes.
220.594 Zoning, deed or building restrictions.
220.595 Convenant regarding racial restrictions and use of property.
220.600 Covenant relating to use of property.
220.601 Use of proceeds—in general.
220.602 Nature of borrower's ownership.
220.603 Supervision by Commissioner.
220.610 Commitments to insure.
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220.625 Adjustment resulting from cost certification.
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220.700 Effective date.

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Sec.
220.751 Incorporation by reference.
220.752 Payment of insurance benefits.

INSURED PROJECT IMPROVEMENT LOANS

220.800 Definitions.
220.801 Initial endorsement of loan.
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220.804 Insurance premiums.
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220.810 Definition of default.
220.811 Date of default.
220.812 Notice of default.
220.813 Commissioner's right to require acceleration.
220.814 Election of action.
220.820 Maximum claim period.
220.821 Items to be filed on submitting claim.
220.822 Claim computation.
220.823 Assignment of insured loans.
220.824 Amendments not to change contractual rights.
220.950 Effective date.

AUTHORITY: §§ 220.1 to 220.950 issued under sec. 211, 52 Stat. 23, as amended, sec. 220, 68 Stat. 596, as amended; 12 U.S.C. 1715b, 1715k.

Subpart A—Eligibility Requirements—Homes

§ 220.1 Incorporation by reference.

(a) All of the provisions of Part 203 of this chapter concerning eligibility requirements of mortgages under section 203 of the National Housing Act apply to mortgages covering one- to eleven-family dwellings under section 220 of the National Housing Act, except the following provisions:

Sec.
203.15 Certification of appraisal amount.
203.18 Maximum mortgage amounts.
203.19 Mortgagor's minimum investment.
203.27 Maximum charges, fees and discounts.
203.28 Economic soundness of project.
203.40 Location of property.
203.42 Rental properties.
203.50 et seq. Insured home improvement loans.
203.249 Effective date.

(b) For the purposes of this subpart all references in Part 203 of this chapter to section 203 of the Act shall be construed to refer to section 220 of the Act.

§ 220.5 Location of property.

The mortgaged property must be located in

(a) The area of an existing slum clearance and urban redevelopment project covered by a Federal-aid contract executed or prior approval granted (pursuant to Title I of the Housing Act of 1949, as amended) before the effective date of the Housing Act of 1954, or

(b) An urban renewal area in a community which has a workable program to eliminate and prevent the spread of slums and urban blight, and respecting which the Housing and Home Finance Administrator has made the findings prescribed in Title I of the Housing Act of 1949, as amended, or

(c) The area of an urban renewal project assisted under section 111 of the Housing Act of 1949, as amended, providing for redevelopment or rehabilitation of urban areas made necessary as the result of a disaster.

§ 220.10 Certificate by Administrator to Commissioner.

No mortgage may be insured until a redevelopment or urban renewal plan has been approved for the area by the governing body of the locality involved and by the Housing and Home Finance Administrator and the Administrator has certified to the Commissioner that:

(a) The redevelopment plan or the urban renewal plan conforms to a general plan for the locality as a whole, and

(b) There exists the necessary authority and financial capacity to assure the completion of such redevelopment or urban renewal plan, or

(c) There exists an urban renewal plan as required for projects assisted under section 111 of the Housing Act of 1949, as amended, which plan conforms to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements, and there exists the necessary authority and financial capacity to insure completion of such urban renewal plan.

§ 220.15 Standards and conditions of acceptability.

The mortgaged property shall meet such standards and conditions as the Commissioner shall prescribe to establish the acceptability of such property for mortgage insurance. These shall include standards and conditions designed to restore the quality of the area to a condition which would justify mortgage insurance.

§ 220.20 Dwelling units on property.

At the time the mortgage is insured there shall be located on the mortgaged property a dwelling designed principally for residential use of not more than eleven families. Such dwelling may be connected with other dwellings by a party wall or otherwise. Any such dwelling shall be constructed or rehabilitated pursuant to an urban renewal plan approved by the Administrator as provided in section 220(d)(1)(A) of the National Housing Act, as amended.

§ 220.25 Maximum mortgage amounts—dollar limitation.

Depending upon the design of the structure, a mortgage shall not exceed the lesser of the following:

(a) $25,000 for a one-family residence;

(b) $27,500 for a two-family residence;

(c) $30,000 for a three-family residence;

(d) $35,000 for a four-family resi-

(e) $35,000 plus not to exceed $7,000 for each additional family unit in excess of four.

§ 220.30 Maximum mortgage amounts—loan-to-value limitation.

(a) *Occupant mortgagors.* Where the mortgagor is the occupant of the property, the mortgage shall be in an amount not in excess of:

(1) 97 percent of $15,000 of the Commissioner's estimate of the replacement cost of the property as of the date the mortgage is accepted for insurance, and 90 percent of such cost in excess of $15,000, but not in excess of $20,000 and 75 percent of such cost in excess of $20,000, if the application for insurance is for construction of a proposed dwelling which is approved for mortgage insurance prior to the beginning of construction.

(2) 90 percent of $20,000 of the Commissioner's estimate of replacement cost of the property as of the date the mortgage is accepted for insurance, and 75 percent of such cost in excess of $20,000, if the application for insurance covers a new dwelling under construction which is approved for mortgage insurance after the beginning of construction and prior to the completion of construction.

(3) 97 percent of $15,000 of the Commissioner's estimate of the cost of rehabilitation plus the Commissioner's estimate of the value of the property before rehabilitation as of the date the mortgage is accepted for insurance, and 90 percent of such value in excess of $15,000, but not in excess of $20,000 and 75 percent of such value in excess of $20,000, if the application for insurance covers an existing dwelling which was approved for mortgage insurance prior to the beginning of construction or an existing dwelling the construction of which has been completed for more than one year; provided however, that if the application involves the refinancing of an existing indebtedness the mortgage may not exceed the sum of (i) the estimated cost of repairs and rehabilitation, and (ii) the amount required to refinance the existing indebtedness secured by the property.

(4) 90 percent of $200,000 of the Commissioner's estimate of the cost of rehabilitation plus the Commissioner's estimate of the value of the property before rehabilitation as of the date the mortgage is accepted for insurance, and 75 percent of such value in excess of $20,000, if the application for insurance covers an existing dwelling which was not approved for mortgage insurance prior to beginning of construction and the construction has been completed less than one year; provided however, that if the application involves the refinancing of an existing indebtedness the mortgage may not exceed the sum of (i) the estimated cost of repairs and rehabilitation, and (ii) the amount required to refinance the existing indebtedness secured by the property.

(b) *Nonoccupant mortgagors.* A mortgage executed by a mortgagor who is not the occupant of the property shall not exceed:

(1) 85 percent of any amount computed under paragraph (a); or

(2) The full amount computed under paragraph (a) of this section if the mortgage covers a one or two-family residence and the Commissioner is furnished with certificates indicating that:

(i) The mortgagor will not rent (except for a rental term of not less than 30 days and not more than 60 days), sell (except where the insured mortgage is paid in full as an incident of the sale), or occupy the property prior to the 18th amortization payment of the mortgage except with the prior written approval of the Commissioner;

(ii) Not less than 15 percent of the original principal amount of the mortgage proceeds has been deposited in an escrow, trust, or special account;

(iii) The mortgagor agrees that, if the property is not sold prior to the due date of the 18th amortization payment of the mortgage to a purchaser acceptable to the Commissioner who will occupy the property, assume, and agree to pay the mortgage indebtedness, the amount held in escrow, trust, or special account will be applied in reduction of the outstanding principal amount of the mortgage as of the due date of the 18th amortization payment of the mortgage;

(iv) The mortgagee agrees that any portion of the fund held in escrow, trust, or special account, not applied to the mortgage in accordance with the provisions of this paragraph, shall be deducted from the amount of the cash settlement to which the mortgagee would be otherwise entitled if a claim for insurance benefits is filed.

§ 220.35 Mortgagor's minimum investment.

At the time the mortgage is insured the mortgagor shall have paid on account of the property at least 3 percent of the Commissioner's estimate of the cost of acquisition, or such larger amount as the Commissioner may determine, in cash or its equivalent.

§ 220.40 Rental properties.

(a) A mortgage on property upon which there is a dwelling to be rented by the mortgagor, shall not be eligible for insurance if said property is a part of, or adjacent or contiguous to a project, subdivision or group of similar rental properties which involve twelve or more dwelling units if the mortgagor has any financial interest in said properties.

(b) No two-, three-, or four-family dwelling nor single-family dwelling, if it is a part of a group of five or more single family dwellings held by the same mortgagor or any part or unit thereof, shall be rented or offered for rent for transient or hotel purposes, as defined in § 203.16 of this chapter, so long as such dwelling is subject to any insured mortgage.

§ 220.45 Certificates of appraisal and replacement amounts.

All of the provisions of § 203.15 of this chapter apply to mortgages insured under this subpart except that with respect to mortgages meeting the requirements of § 220.21(a)(1), the application for insurance must be accompanied by an agreement satisfactory to the Commissioner executed by the seller, builder or such other person as required by the Commissioner whereby such person agrees that prior to any sale of the dwelling such person will deliver to the purchaser of the property a written statement acceptable to the Commissioner setting forth the amount of the Commissioner's estimate of the replacement cost of the property.

§ 220.50 Maximum charges, fees or discounts.

(a) The mortgagee may collect from the mortgagor the following charges, fees or discounts:

(1) The application fees provided for in this part.

(2) A charge to compensate the mortgagee for expenses incurred in originating and closing the loan, the charge not to exceed:

(i) $20 or 1 percent of the original principal amount of the mortgage, whichever is the greater; or

(ii) $50 or 2½ percent of the original principal amount of the mortgage, whichever is the greater, with respect to mortgages on property under construction or to be constructed where the mortgagee makes partial disbursements and inspections of the property during the progress of construction.

(3) Reasonable and customary amounts for any of the following items:

(i) Recording fees and recording taxes or other charges incident to recordation;

(ii) Credit Report;

(iii) Survey, if required by mortgagee or mortgagor;

(iv) Title examination; title insurance, if any;

(v) Such other reasonable and customary charges or fees as may be authorized by the Commissioner.

(4) Reasonable and customary charges in the nature of discounts if the mortgagor is:

(i) A builder constructing houses for sale who executes the mortgage in his own name;

(ii) Constructing a dwelling for his own occupancy; or

(iii) Refinancing a prior mortgage covering property owned by the mortgagor.

(iv) Purchasing the property from a governmental agency or municipal corporation which is precluded by statute from paying the discount.

INSURED HOME IMPROVEMENT LOANS

§ 220.100 Incorporation by reference.

All of the provisions in §§ 203.50 et seq. covering insured home improvement loans under section 203(k) of the Act shall apply to insured home improvement loans on one- to four-family dwellings under section 220(h) of the Act except the following provisions:

Sec.
203.73 Minimum and maximum loan amounts.
203.94 Economic soundness.

§ 220.101 Minimum loan amount.

The loan shall involve a minimum principal amount of $1,000 provided that a lesser amount may be approved by the Commissioner if the proceeds of the loan

are to be used to rehabilitate the property to meet the neighborhood standards prescribed by a local public agency.

§ 220.102 Maximum loan amount.

The principal amount of the loan shall not exceed:

(a) The Commissioner's estimate of the cost of improvements, or $10,000 per family unit, whichever is the lesser; or

(b) An amount which, when added to any outstanding indebtedness related to the property, creates a total outstanding indebtedness which does not exceed the limits prescribed in §§ 220.25 and 220.30 for mortgages on properties other than new construction.

§ 220.103 Type and location of property.

The property to be improved shall:

(a) Constitute real property located within the United States, its territories, or possessions;

(b) Contain an existing structure or structures;

(c) Be located in one of the urban renewal areas specified in § 220.5.

§ 220.200 Effective date.

Unless otherwise specified the provisions of this subpart shall be effective as to all mortgages with respect to which a commitment to insure is issued on or after July 7, 1961.

Subpart B—Contract Rights and Obligations—Homes

§ 220.251 Incorporation by reference.

(a) All of the provisions of Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to mortgages covering one- to eleven-family dwellings insured under section 220 of the National Housing Act except the following provisions:

Sec.
203.340 Conditions of special forbearance relief.
203.341 Reimbursement for uncollected interest.
203.350 Assignment of defaulted mortgage—in general.
203.351 Application for debentures and fiscal data.
203.352 Title evidence upon assignment.
203.353 Certification by mortgagee.
203.362 Conditions for withdrawal of application for debentures.
203.363 Reconveyance for noncompliance with regulations.
203.364 Mortgagee's liability for property expenditures.
203.377 Mortgagee's liability for waste.
203.378 Adjustment for waste.
203.379 Adjustment for fire, flood, earthquake or tornado damage.
203.382 Cancellation of hazard insurance.
203.400 Delivery of debentures.
203.401 Debenture computation—conveyed properties.
203.402 Debenture computation—conveyed properties; items included.
203.403 Debenture computation—conveyed properties; items deducted.
203.404 Debenture computation—assigned mortgages.
203.405 Debenture interest rate.
203.406 Maturity of debentures.
203.407 Registration of debentures.
203.408 Denomination of debentures.
203.409 Redemption of debentures.
203.410 Issue date of debentures.
203.411 Cash adjustment.
203.415 Delivery of certificate of claim.
203.416 Amount and items of certificate of claim.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.
203.422 Right and liability under Mutual Mortgage Insurance Fund.
203.423 Distribution of distributive shares.
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.
203.435 Form of assignment to investing mortgagee.

(b) For the purposes of this subpart all references in Part 203 of this chapter to section 203 of the Act shall be construed to refer to section 220 of the Act and all references to the Mutual Mortgage Insurance Fund shall be construed to refer to the section 220 Housing Insurance Fund.

§ 220.252 Forbearance of foreclosure and assignments of mortgages.

All of the provisions of §§ 203.340, 203.341, 203.350, 203.351, 203.352, and 203.353 of this chapter shall apply to mortgages insured under this subpart except that the privileges of forbearance of foreclosure and assignment of defaulted mortgages shall only extend to mortgages covering a property having not more than four dwelling units and in each instance where the word "debentures" is used in these sections it shall be interpreted to mean insurance benefits.

§ 220.260 Conditions for withdrawal of application for insurance benefits.

With the consent of the Commissioner, a mortgagee may withdraw an application for insurance benefits if the mortgagee agrees that it will:

(a) Accept a reconveyance of the property under a deed which warrants against the acts of the Commissioner and all claiming by, through, or under him; and

(b) Promptly file a reconveyance for record; and

(c) Accept without continuation the title evidence which it furnished the Commissioner; and

(d) Reimburse the Commissioner for property expenditures as set forth in § 203.364 of this chapter.

§ 220.261 Reconveyance for noncompliance with regulations.

If for any reason, the mortgagee fails to comply with the regulations in this subpart, the Commissioner may hold processing of the application for insurance benefits in abeyance for a reasonable period of time in order to permit the mortgagee to comply or, in the alternative, the Commissioner may reconvey title to the property to the mortgagee in which event the application for insurance benefits shall be considered as cancelled without prejudice to the rights of the mortgagee to reapply for insur-

ance benefits at a subsequent date as approved by the Commissioner.

§ 220.262 Mortgagee's liability for property expenditures.

In the event the Commissioner acquires any property and thereafter incurs an expense or makes an expenditure incidental to such property and it subsequently becomes necessary to reconvey the property to the mortgagee because of the mortgagee's noncompliance with the regulations in this subpart or because, with the consent of the Commissioner a mortgagee withdraws an application for insurance benefits, the mortgagee shall assume liability for payment of all expenses incurred and unpaid by the Commissioner and reimburse the Commissioner for all expenditures made from the date the deed to the Commissioner was filed for record to the date of reconveyance of the property to the mortgagee, after appropriate adjustment on account of any income received from the property.

§ 220.265 Mortgagee's liability for waste.

(a) The mortgagee's liability for damage caused by waste shall not apply to mortgages on which the unpaid principal obligation (as increased by the amount of any open-end advances) at the time of the institution of foreclosure proceedings or the date of acquisition of the property otherwise after default exceeds 75 percent of the appraised value of the property as of the date the mortgage was accepted for insurance, and in any event, the obligation of the mortgagee to repair waste shall be limited to the amount of $100 for each family dwelling unit covered by the mortgage.

(b) Damage by waste, as defined in this subpart, which in the Commissioner's judgment does not exceed $25 shall not be considered as substantial injury and shall not be deducted from the insurance benefits settlement.

§ 220.266 Adjustment for waste.

If the property has been damaged by waste as defined in § 203.376 of this chapter, the Commissioner shall deduct from the insurance benefits to be issued to the mortgagee an amount not to exceed the Commissioner's estimate of the cost of repairing the waste damage but not to exceed the limitation of $100 for each family dwelling unit covered by the mortgage.

§ 220.267 Adjustment for fire, flood, earthquake or tornado damage.

If the property has been damaged by fire, flood, earthquake or tornado, such damage shall be repaired prior to conveyance of the property or the assignment of the mortgage to the Commissioner, except that if prior approval of the Commissioner is obtained the damaged property may be conveyed to him or mortgage assigned to him and he shall deduct from insurance benefits an amount not to exceed the greater of (a) his estimate of the cost of repairing such damage or (b) the insurance recovery.

§ 220.270 Cancellation of hazard insurance.

The mortgagee shall cancel any hazard insurance policy as of the date of the filing for record of the deed to the Commissioner subject to the following conditions:

(a) The amount of the return premium due the mortgagee because of such cancellation may be calculated on a "short-rate" basis and reported on fiscal data supporting the application for insurance benefits and the amount shall be deducted from the total amount claimed.

(b) If the mortgagee's calculation of the return premium is less than the actual return, the amount of the difference between the actual refund and the calculated amount shall be remitted to the Commissioner, accompanied by the carrier's or agent's statement.

(c) If the mortgagee's calculation of the return premium is more than the actual return, the mortgagee may file with the Commissioner a claim, supported by the carrier's or agent's statement of the amount of the refund, whereupon the Commissioner shall issue a check to the mortgagee in settlement of the claim.

§ 220.275 Payment of insurance benefits.

If the application for insurance benefits is acceptable to the Commissioner he shall deliver to the mortgagee cash of the section 220 Housing Insurance Fund.

§ 220.276 Insurance benefits computation—conveyed properties.

The cash settlement shall be determined by adding to the original principal of the mortgage (as increased by the amount of open-end advances made by the mortgagee and approved by the Commissioner) which was unpaid on the date of the institution of foreclosure proceedings, the acquisition of the property otherwise after default, or the property was acquired by the Commissioner under a direct conveyance by the mortgagor, the amount of all payments made by the mortgagee and allowances for items as set forth in § 220.277 less all items as set forth in § 220.278.

§ 220.277 Insurance benefits computation—conveyed properties; items included.

The amount of the cash settlement in connection with properties conveyed to the Commissioner shall include the following items:

(a) Taxes, ground rent and water rates, which are liens prior to the mortgage;

(b) Special assessments, which are noted on the application for insurance or which become liens after the insurance of the mortgage;

(c) Hazard insurance on the mortgaged property;

(d) MIP or open - end insurance charges paid after the institution of foreclosure proceedings or the acquisition of the property by direct conveyance or otherwise after default;

(e) Taxes imposed upon any deeds or other instruments by which said property was acquired by the mortgagee and transferred or conveyed to the Commissioner;

(f) Foreclosure costs or costs of acquiring the property otherwise (including costs of acquiring the property by the mortgagee and of conveying and evidencing title to the property to the Commissioner) actually paid by the mortgagee and approved by the Commissioner in an amount not in excess of two-thirds of such costs or $75, whichever is the greater;

(g) Reasonable payments made by the mortgagee, with the approval of the Commissioner, for the purpose of protecting, operating, or preserving the property;

(h) Any uncollected mortgage interest allowed pursuant to an approved forbearance plan.

§ 220.278 Insurance benefits computation—conveyed properties; items deducted.

There shall be deducted from the total of the added items in §§ 220.276 and 220.277 any amount received on account of the mortgage after the institution of foreclosure proceedings or the acquisition of the property by direct conveyance or otherwise after default and from any source relating to the property on account of rent or other income after deducting reasonable expenses incurred in handling the property.

§ 220.279 Insurance benefits computation—assigned mortgages.

Upon an acceptable assignment of a mortgage the Commissioner shall issue to the mortgagee cash equal to the unpaid balance of the loan at the time of assignment, plus any accrued mortgage interest and any advances made under the mortgage and approved by the Commissioner.

§ 220.285 Delivery of certificate of claim.

In addition to the cash settlement provided for in this subpart with respect to properties conveyed to the Commissioner, the Commissioner shall deliver to the mortgagee a certificate of claim in accordance with section 204(e) of the Act, which shall become payable, if at all, in accordance with section 204(f) of the Act.

§ 220.286 Amount and items of certificate of claim.

The certificate shall be for an amount which the Commissioner determines to be sufficient to pay all amounts due under the mortgage and not covered by the amount of cash settlement. The certificate shall include a reasonable amount for necessary expenses incurred by the mortgagee in connection with the foreclosure proceedings or the acquisition of the mortgaged property otherwise and the conveyance thereof to the Commissioner, including reasonable attorneys' fees, unpaid interest, and cost of repairs to the property made by the mortgagee to remedy the waste.

INSURED HOME IMPROVEMENT LOANS

§ 220.350 Incorporation by reference.

All of the provisions of §§ 203.440 et seq. of this chapter covering insured home improvement loans under section 203(k) of the Act shall apply to home improvement loans on one- to four-family dwellings under section 220(h) of the Act except:

Sec.
203.478 Debenture claim computation.
203.479 Debenture interest rate.
203.481 Maturity of debentures.
203.482 Registration of debentures.
203.483 Denomination of debentures.
203.484 Redemption of debentures.
203.486 Issue date of debentures.
203.487 Cash adjustment.

(b) For the purposes of this subpart, all references in §§ 203.440 et seq. to the section 203 Home Improvement Account shall be construed to refer to the section 220 Home Improvement Account.

§ 220.351 Claim computation.

Upon acceptable assignment of the note and security instruments, the Commissioner shall pay the lender in cash an amount equal to the unpaid principal balance of the loan, plus:

(a) Any accrued interest due on the loan;

(b) Any advances made previously under the provisions of the loan instrument and approved by the Commissioner;

(c) Reimbursement for such reasonable collection costs, court costs and attorney's fees as may be approved by the Commissioner.

§ 220.450 Effective date.

(a) Unless otherwise specified the provisions of this subpart are effective as to all loans and mortgages on which commitments to insure are issued on or after July 7, 1961.

(b) With respect to mortgages endorsed for insurance on or after July 7, 1961, pursuant to commitments outstanding prior to July 7, 1961, a mortgagee may, upon filing a written request with the application for the payment of insurance benefits, receive payment as provided in Part 203 of this chapter in lieu of the insurance benefits provisions of this subpart.

Subpart C—Eligibility Requirements—Projects

§ 220.501 Incorporation by reference.

(a) All of the provisions of Part 207 of this chapter, concerning eligibility requirements of mortgages covering multifamily housing under section 207 of the National Housing Act, apply with full force and effect to multifamily project mortgages insured under section 220 of the National Housing Act, except the following provisions:

Sec.
207.2 Issuance of commitment.
207.4 Maximum mortgage amounts.
207.7 Maximum interest rate.
207.11 Soundness of project.
207.17 Classification.
207.19 Required supervision of private mortgagors.
207.24 Development of property.
207.29 Rehabilitation projects.
207.31 Eligibility of miscellaneous - type mortgages.
207.32 Eligibility of refinanced mortgages.
207.33 Eligibility of mortgages on trailer courts or parks for trailer coach mobile dwellings.
207.34 Reinsurance of Commissioner-held mortgages.
207.37 Effective date.

(b) For the purposes of this subpart all references in Part 207 of this chapter to section 207 of the National Housing Act shall be deemed to refer to section 220 of the National Housing Act.

§ 220.502 Location of property.

The mortgaged property must be located in:

(a) The area of an existing slum clearance and urban redevelopment project covered by a Federal-aid contract executed or a prior approval granted (pursuant to Title I of the Housing Act of 1949, as amended), before the effective date of the Housing Act of 1954, or

(b) An urban renewal area in a community which has a workable program to eliminate and prevent the spread of slums and urban blight, and respecting which the Housing and Home Finance Administrator has made the findings prescribed in Title I of the Housing Act of 1949, as amended, or

(c) The area of an urban renewal project assisted under section 111 of the Housing Act of 1949, as amended, providing for redevelopment or rehabilitation of urban areas made necessary as the result of a disaster.

§ 220.503 Certificate by Administrator to Commissioner.

No mortgage may be insured until a redevelopment or urban renewal plan has been approved for the area by the governing body of the locality involved and by the Housing and Home Finance Administrator and the Administrator has certified to the Commissioner that:

(a) The redevelopment plan or the urban renewal plan conforms to a general plan for the locality as a whole, and

(b) There exist the necessary authority and financial capacity to assure the completion of such redevelopment or urban renewal plan, or

(c) There exists an urban renewal plan as required for projects assisted under section 111 of the Housing Act of 1949, as amended, which plan conforms to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements, and there exist the necessary authority and financial capacity to insure completion of such urban renewal plan.

§ 220.504 Standards and conditions of acceptability.

The mortgaged property must meet such standards and conditions as the Commissioner shall prescribe to establish the acceptability of such property for mortgage insurance. These will include standards and conditions designed to restore the quality of the area to a condition which would justify mortgage insurance.

§ 220.505 Issuance of commitment.

All of the provisions of § 207.2 of this chapter apply with respect to the issuance of commitments under this part except that commitments to insure advances, as set forth in paragraph (c), shall be effective for a stated period not in excess of 180 days.

§ 220.506 Development of property.

(a) *Obligation of mortgagor to construct project.* At the time the mortgage is insured, the mortgagor shall be obligated to construct and complete new

housing accommodations on the mortgaged property or to rehabilitate existing housing accommodations thereon. The Commissioner may insure a mortgage on a completed project constructed pursuant to a commitment to insure upon completion.

(b) *Minimum number of units.* The project shall consist of not less than five rental dwelling units on one site and may be detached, semidetached, or row houses, or a multifamily structure.

(c) *Compliance with governmental regulations.* The property, including improvements, shall comply with any material zoning or deed restrictions applicable to the project site and with all applicable building and other governmental regulations.

(d) *Property facilities.* The project shall be designed principally for residential use except that any project may include such nondwelling facilities as the Commissioner deems adequate to serve the needs of the occupants of the property and of other housing in the neighborhood as defined by the Commissioner.

§ 220.507 Maximum mortgage amounts.

(a) *Mortgage amount—dollar limitation.* A mortgage may involve a principal obligation not in excess of the lesser of the following:

(1) $20,000,000 if executed by a Private Mortgagor;

(2) $50,000,000 if executed by a Public Mortgagor;

(3) $2,500 per room (or $9,000 per family unit if the number of rooms in such project does not equal or exceed four per family unit) for such part of such project as may be attributable to dwelling use excluding exterior land improvements as defined by the Commissioner.

(b) *Increased mortgage amount—elevator type structures.* In order to compensate for the higher costs incident to cost of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitation of $2,500 per room to not to exceed $3,000 per room and the dollar amount limitation of $9,000 per family unit to not to exceed $9,400 per family unit.

(c) *Increased mortgage amount—high cost areas.* (1) In any geographical area where the Commissioner finds cost levels so require, the Commissioner may increase the dollar amount limitation by an amount not to exceed $1,250 per room without regard to the number of rooms being less than four, or more than four.

(2) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

(d) *Adjusted mortgage amount—rehabilitation projects.* A mortgage having a principal amount computed in compliance with the applicable provisions of paragraphs (a) to (c) of this section, and which involves a project to be repaired or rehabilitated, shall be subject to the following additional limitations:

(1) *Property held in fee.* If the mortgagor is the fee simple owner of the project, the maximum mortgage amount shall not exceed 100 percent of the Commissioner's estimate of the cost of the proposed repairs or rehabilitation; or

(2) *Property subject to existing mortgage.* If the mortgagor owns the project subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the maximum mortgage amount shall not exceed: (i) The Commissioner's estimate of the cost of the repair or rehabilitation; and (ii) such portion of the outstanding indebtedness as does not exceed 90 percent of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation; or

(3) *Property to be acquired.* If the project is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the maximum mortgage amount shall not exceed 90 percent of: (i) The Commissioner's estimate of the cost of the repair or rehabilitation and (ii) the actual purchase price of the land and improvements, but not in excess of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation.

The dollar limitation set forth in this section is in addition to the loan-to-value limitation as set forth in § 220.508.

(e) *Increased mortgage amount—operating losses.* When the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project, excluding depreciation, covered by such mortgage during the first two years following final endorsement exceed the project income the Commissioner may, in his discretion and upon such terms and conditions as he may prescribe, permit the excess of the foregoing expenses over the project income to be added to the amount of such mortgage, and extend the coverage of the mortgage insurance thereto, and any such additional advance by the mortgagee to cover such excess shall be deemed to be part of the original face amount of the mortgage.

§ 220.508 Maximum mortgage amount—loan-to-value limitation.

In addition to meeting the dollar limitation set forth in § 220.507 the mortgage shall be in an amount not to exceed:

(a) *Rehabilitation and non-approved new construction.* 90 percent of the sum of the estimated cost of repair and rehabilitation and the Commissioner's estimate of the value of the property before repair and rehabilitation if the proceeds of the mortgage are used to finance the rehabilitation of an existing project or complete the construction of a new project not approved for mortgage insurance prior to the beginning of construction provided that in no case involving refinancing shall such mortgage exceed such estimated cost of repair and rehabilitation and the amount (as determined by the Commissioner) required to refinance existing indebtedness secured by any such property or project.

(b) *Approved new construction.* 90 percent of the Commissioner's estimate of the replacement cost, as of the date the mortgage is accepted for insurance if the project is approved for mortgage insurance prior to the beginning of construction. The replacement cost of the property or project may include the land, the proposed physical improvements, utilities within the boundaries of the property or project, architect's fees, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the Commissioner; and shall include an allowance for builder's and sponsor's profit and risk to be determined by totaling the foregoing items, with the exception of the land, and applying the percentage or percentages specified in § 220.513.

§ 220.509 Maximum mortgage amount—leaseholds.

The maximum mortgage amount is subject to reduction by an amount equal to the capitalized value of the ground rent in the event the mortgage is on a leasehold estate rather than on a fee simple holding.

§ 220.510 Interest rate.

The mortgage shall bear interest, not exceeding 5¼ percent per annum, on the amount of the principal obligation outstanding at any time, as may be agreed upon between the mortgagor and the mortgagee. All charges made in connection with the mortgage transaction shall be subject to the approval of the Commissioner.

§ 220.511 Labor standards and prevailing wage requirements.

All of the provisions of § 207.19 of this chapter apply, except that in the case of a mortgage covering property on which there is located a dwelling or dwellings designed principally for residential use for five to eleven families § 207.19(d) relating to labor standards and prevailing wage requirements shall not apply.

§ 220.512 Classification of mortgagors.

In order to be eligible as a mortgagor under this part the applicant must be:

(a) (1) *Private corporate mortgagors.* A private corporation (referred to in this subchapter as "mortgagor," "corporation," or "mortgagor corporation"), formed or created, with the approval of the Commissioner for the purpose of providing housing for rent or sale, and possessing powers necessary therefor and

incidental thereto, which corporation is regulated or restricted by the Commissioner as to rents or sales, charges, capital structure, rate of return, and methods of operation. Such regulation or restriction shall remain in effect until such time as the mortgage insurance contract terminates without obligation upon the Commissioner to issue debentures as a result of such termination. So long as such contract of insurance is in effect, the corporation shall engage in no business other than the construction and operation of a Rental Housing project limited to nontransient occupancy; or

(2) *Private non-corporate mortgagors.* An association, partnership, trustee or legal entity other than a corporation, formed or created, with the approval of the Commissioner for the purpose of providing housing for rent or sale, and possessing powers necessary therefor and incidental thereto, which private non-corporate mortgagor is regulated or restricted by the Commissioner as to rents or sales, charges, capital structure, rate of return, and methods of operation. Such regulation or restriction shall remain in effect until such time as the mortgage insurance contract terminates without obligation upon the Commissioner to issue debentures as a result of such termination. So long as such contract of insurance is in effect, the private non-corporate mortgagor shall not, except with the approval of the Commissioner, engage in any business other than the construction and operation of a Rental Housing project limited to nontransient occupancy. The powers of the Commissioner to regulate or restrict the operations of such private non-corporate mortgagors may in the discretion of the Commissioner be effected and exercised under a contract or regulatory agreement satisfactory to and approved by the Commissioner, rather than through the provisions of a certificate of incorporation or other instrument under which the mortgagor is created or through the acquisition of shares of stock or certificates of interest as provided in §§ 207.18 (c) and 207.19(a) of this chapter which sections are incorporated by reference in this part. In connection with those portions of Part 207 of this chapter which are incorporated by reference into this subpart certain words and terms shall be deemed to have a meaning and connotation as follows: "Corporation" means "private non-corporate mortgagor;" "certificate of incorporation" means "articles of association and/or Regulatory Agreement;" "shares of stock," "special stock" or "interest" mean the equities or interests of the members of the private non-corporate mortgagor association; and "stockholders," either expressly or impliedly designated, means members of the private non-corporate mortgagor association; or

(b) *Public mortgagors.* A federal or state instrumentality, a municipal corporate instrumentality of one or more states, or a limited dividend or redevelopment or housing corporation formed under and restricted by federal or state laws or regulations of a state banking or insurance department as to rents, charges, capital structure, rate of return, or methods of operation.

(c) *Private cooperative ownership mortgagors.* Subject to such requirements as the Commissioner may prescribe a mortgagor may be a nonprofit cooperative ownership housing corporation or trust, the permanent occupancy of the dwellings of which is restricted to the members of such corporation or to the beneficiaries of such trust.

(d) *Individual mortgagors.* Subject to such requirements as the Commissioner may prescribe a mortgagor may be an individual in the case of a rehabilitation project consisting of not less than five nor more than eleven dwelling units.

(Sec. 220, 68 Stat. 596, as amended; 12 U.S.C. 1715k)

§ 220.513 Builder's and sponsor's profit and risk allowance.

(a) *Identity of interest cases.* In the case of a mortgage where it is determined by the Commissioner than an identity of interest exists between the mortgagor and the builder or contractor, there shall be included in the actual cost, in lieu of any allowance for a "builder's fixed fee" provided for in § 207.25(b) of this chapter, an allowance for builder's and sponsor's profit and risk equal to 10 percent of all other items entering into the term "actual cost" except land or any amount paid for a leasehold and, in case the mortgage is to assist the financing of repair or rehabilitation, the land and improvements (if any) prior to such repair or rehabilitation and any amount of the mortgage proceeds used to refinance an outstanding indebtedness on the property.

(b) *Non-identity of interest cases.* In the case of a mortgage where it is established to the satisfaction of the Commissioner that no identity of interest exists between the mortgagor and the builder or contractor, there shall be included in the actual cost, in addition to the items provided for in § 207.26(a) of this chapter, an allowance for sponsor's profit and risk equal to 10 percent of all other items entering into the term "actual cost" except amounts paid by the mortgagor under a general construction contract and other items required to be deducted under the provisions of paragraph (a) of this section.

(Sec. 220, 68 Stat. 596, as amended; 12 U. S. C. 1715k)

Insured Project Improvement Loans

§ 220.550 Definitions.

As used in §§ 222.550 et seq. the following terms shall have the meaning indicated:

(a) "Commissioner" means the Federal Housing Commissioner or his authorized representative.

(b) "Act" means the National Housing Act, as amended.

(c) "FHA" means the Federal Housing Administration.

(d) "Insured loan" means a loan which has been insured by the FHA, as evidenced by the endorsement of the credit instrument for insurance by the Commissioner.

(e) "Insurance premium" means the loan insurance premium paid by the financial institution to the Commissioner in consideration of the contract of insurance.

(f) "Loan" means an advance of funds or credit evidenced by a note, which is secured by a security instrument.

(g) "Outstanding indebtedness relating to the property" means the total amount of outstanding obligations incurred in connection with improving, repairing or maintaining the property and outstanding mortgages or obligations constituting liens on the title to the property to be improved.

(h) "Lender" means an approved financial institution eligible for insurance under section 220(h) of the Act that is the holder of an insured loan or the holder of a loan presented for insurance.

§ 220.552 Form of application.

The application shall be on a form prescribed by the Commissioner together with the exhibits called for by such form.

§ 220.553 Application fee.

The application shall be accompanied by an application fee of $1.50 per thousand of the face amount of the loan applied for.

§ 220.554 Commitment fee.

A commitment fee, which when added to the application fee will aggregate $3.00 per thousand of the face amount of the loan set forth in the commitment shall be paid within 30 days after the date of the commitment, or within such additional period of time as may be agreed to in writing by the Commissioner.

§ 220.555 Inspection fee.

The commitment may provide for the payment of an inspection fee in an amount not to exceed $5.00 per thousand dollars of the amount of the loan set forth in the commitment.

§ 220.560 Fees on increased loan.

(a) Upon application for an increase in the amount of an existing commitment, an additional application fee of $1.50 per thousand dollars shall be paid based upon the amount of such increase. Such increase shall be subject to the payment of an additional commitment fee which, when added to the additional application fee, will aggregate $3.00 per thousand of the amount of the increase.

(b) If the amount of the insured loan is increased after insurance and prior to the final endorsement either by amendment or by the substitution of a new insured loan, the fees herein provided for, including the inspection fee, shall be based upon the amount of such increase.

§ 220.561 Refund of fees.

If an application is rejected before it is assigned for processing, or in such other instances as the Commissioner may determine, the entire fee or any portion thereof may be waived, if not paid, or if paid, may be returned to the applicant.

§ 220.562 Charges by lender.

The lender may collect from the borrower the amount of the fees provided

for in §§ 220.550 et seq. and may charge the borrower an initial service charge to reimburse itself for the cost of closing the transaction, in an amount not to exceed 1½ percent of the original principal amount of the loan. Any additional charges shall be subject to prior approval of the Commissioner.

§ 220.563 Eligible lenders.

Lenders meeting the applicable eligibility qualifications and requirements contained in §§ 203.1–203.4 or 203.6 of this chapter shall be eligible for insurance of project improvement loans under § 220.550 et seq.

§ 220.564 Note and security form.

The lender shall present for insurance a note and security instrument on a form approved by the Commissioner which is valid and enforceable against the borrower or borrowers in the jurisdiction in which the property to be improved is located.

§ 220.565 Disbursement of proceeds.

Prior to final endorsement, the entire principal amount of the note shall have been disbursed to the borrower or to his creditors for his account and with his consent.

§ 220.570 Loan multiples.

If the loan is not in excess of $10,000, it shall be in multiples of $50. If the loan exceeds $10,000, it shall be in multiples of $100.

§ 220.571 Method of loan payment.

The loan shall provide for monthly payments on the first day of each month on account of interest and principal and shall provide for payments in accordance with the amortization plan as agreed upon by the borrower, the lender and the Commissioner.

§ 220.572 Date of first payment to principal.

The Commissioner shall estimate the time necessary to complete the improvements to the project and shall establish the date of the first payment to principal so that the lapse of time between completion of the improvements and commencement of amortization will not be longer than necessary to obtain sustaining occupancy.

§ 220.573 Maturity of loan.

The loan shall have a maturity satisfactory to the Commissioner not less than 5 or more than 20 years from the date of the beginning of amortization or three-quarters of the Commissioner's estimate of the remaining economic life of the structure, whichever is the lesser.

§ 220.574 Loan amortization period.

The loan shall have an amortization period of either 5, 10, 15 or 20 years by providing for either 60, 120, 180 or 240 monthly amortization payments.

§ 220.575 Minimum and maximum loan amounts.

The loan shall involve a minimum principal amount of $1000 and shall not exceed:

(a) The Commissioner's estimate of the cost of the improvements or $10,000 per family unit, whichever is the lesser; or

(b) An amount which, when added to any outstanding indebtedness related to the property, creates a total outstanding indebtedness which does not exceed the limits prescribed in §§ 220.506, 220.507, and 220.508 for mortgages on properties of the same type other than new construction.

§ 220.576 Maximum interest rate.

The loan may bear interest at such rate as may be agreed upon by the lender and borrower, but in no case shall such rate exceed 6 percent per annum. Interest shall be payable in monthly installments on the principal then outstanding.

§ 220.577 Eligibility of title.

When the principal amount of the loan exceeds $40,000, in order for the mortgaged property to be eligible for insurance, the Commissioner shall determine that the title to the property is vested in the borrower as of the date the security instrument is filed for record. The title evidence will be examined by the Commissioner and the endorsement of the credit instrument for insurance shall be evidence of its acceptability.

§ 220.580 Title evidence.

When the principal amount of the loan exceeds $40,000, the lender, without expense to the Commissioner, shall furnish to the Commissioner a survey satisfactory to him and also a policy of title insurance as provided in paragraph (a) or if the lender is unable to furnish such policy for reasons satisfactory to the Commissioner, the lender without expense to the Commissioner, shall furnish such evidence of title as provided in paragraph (b) as the Commissioner may require. The following are the requirements covering the title insurance and abstract of title:

(a) The policy of title insurance with respect to the security instrument shall be issued by a company satisfactory to the Commissioner. Such policy shall be in such form as may be approved by the Commissioner and shall be payable to the lender and the Commissioner as their respective interests may appear.

(b) The abstract of title shall be satisfactory to the Commissioner, prepared by an abstract title company or an individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

§ 220.581 Security instrument to cover entire property.

The security instrument shall cover the entire property included in the housing project.

§ 220.582 Covenant against liens.

The security instrument shall contain a covenant against the creation by the borrower of liens against the property superior or inferior to the lien of such instrument.

§ 220.583 Accumulation of next premium.

The security instrument shall provide for payments by the borrower to the lender on each interest payment date of an amount sufficient to accumulate in the hands of the lender one payment period prior to its due date the next annual insurance premium payable by the lender to the Commissioner. Such payments shall continue only so long as the contract of insurance shall remain in effect.

§ 220.584 Accumulation of other items.

When the principal amount of the loan exceeds $200,000, the Commissioner may require that the security instrument provide for such equal monthly payments by the borrower to the lender as will amortize the ground rents, if any, and the estimated amount of all taxes, water rates and special assessments, if any, and fire and other hazard insurance premiums, within a period ending one month prior to the date on which the items became delinquent. The security instrument shall further provide that such payments shall be held by the lender for the purpose of paying such ground rents, taxes, water rates, assessments, and insurance premiums before the same become delinquent. The security instrument shall also make provision for an adjustment in case the estimated amount of such taxes, water rates, assessments and insurance premiums shall prove more, or less than the actual amount thereof so paid by the borrower.

§ 220.585 Application of payments.

(a) The security instrument shall provide that all monthly payments to be made by the borrower shall be added together and this aggregate amount shall be paid by the borrower upon each monthly payment date in a single payment. The lender shall apply the payment to the following items in the order set forth:

(1) Premium charges under the contract of insurance;

(2) Interest on the loan;

(3) Amortization of the principal of the loan;

(b) When the principal amount of the loan exceeds $200,000 and the security instrument provides for the accumulation of the items enumerated in § 220.584 the lender shall apply the payments received from the borrower in the following order:

(1) Premium charges under the contract of insurance;

(2) Ground rents, taxes, special assessments and fire and hazard insurance premiums;

(3) Interest on the loan;

(4) Amortization of the principal of the loan;

(c) Any deficiency in the amount of any monthly payments required under paragraph (a) or (b), shall constitute an event of default and the loan shall further provide for a grace period of 30 days within which time the default must be cured.

§ 220.590 Prepayment privilege and prepayment charge.

§ 220.594 Zoning, deed or building restrictions.

(1) Constitute a structure which is used or will be used, upon completion of

§ 220.611 Building loan agreement.

When the principal amount of the

ing occupancy.

§ 220.590 Prepayment privilege and prepayment charge.

(a) *Prepayment privilege.* (1) The security instrument shall contain a provision permitting prepayment of the loan in whole or in part upon any interest payment date after giving to the lender 30 days advance written notice.

(2) If the loan exceeds $200,000 it may contain a provision for a charge in the event of prepayment of principal as may be agreed upon between the borrower and lender. The borrower shall be permitted to prepay up to 15 percent of the original principal amount of the loan in any one calendar year without any additional charge.

(b) *Prepayment under cost certification.* Any reduction in the original principal amount of the loan resulting from the certification of the cost requirements of §§ 220.620–220.625, and 220.630 shall not be construed as a prepayment of the mortgage permitting the imposition of any penalty or charge.

§ 220.592 Late charge.

The loan may provide for the collection by the lender of a late charge, not to exceed 2 cents for each dollar of each payment to interest or principal more than 15 days in arrears, to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the borrower and shall not be deducted from any aggregate monthly payment.

§ 220.593 Certificate regarding use for transient or hotel purposes.

The borrower shall certify under oath, that so long as the loan is insured by the Commissioner, the borrower will not rent, permit the rental or permit the offering for rental of the housing, or any part thereof, covered by such loan for transient or hotel purposes. For the purpose of this certificate, the term rental for transient or hotel purposes shall mean:

(a) Rental for any period less than 30 days; or

(b) Any rental, if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linens and bellboy service.

§ 220.594 Zoning, deed or building restrictions.

The project when rehabilitated shall not violate any material zoning or deed restrictions applicable to the project site, and shall comply with all applicable building and other governmental regulations.

§ 220.595 Covenant regarding racial restrictions and use of property.

The security instrument shall contain a covenant by the borrower that until the loan has been paid in full, or the contract of insurance otherwise terminated, the borrower will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the mortgaged property on the basis of race, color or creed. Such covenant shall be binding upon the borrower and his assigns and shall provide that upon violation thereof, the lender may, at its option, declare the unpaid balance of the loan immediately due and payable.

§ 220.600 Covenant relating to use of property.

When the principal amount of the loan exceeds $40,000, the security instrument shall contain a covenant prohibiting the use of the property covered thereby for any purpose other than that for which it was intended, at the date the loan was executed.

§ 220.601 Use of proceeds.

(a) The proceeds of a loan shall be used only to finance improvements that result in or are in connection with the conservation, repair, restoration or refurbishing the basic livability or utility of an existing structure, including the property on which the structure is located, or in the conversion, alteration, enlargement, remodeling or expansion of such structure, including a change in the living accommodations or the number of family dwelling units located therein.

(b) No loan proceeds shall be used to finance individual equipment items except those relating to heating, ventilating or plumbing or those items determined by the Commissioner to be necessary and incident to improvements as outlined in paragraph (a).

(c) The structure in connection with which the improvements are to be made shall:

(1) Constitute a structure which is used or will be used, upon completion of the improvements, primarily for residential purposes by five or more families; and

(2) Be located in one of the urban renewal areas specified in § 220.502; and

(3) Have been constructed not less than ten years prior to the date of the application for commitment unless, as determined by the Commissioner, the proceeds of the loan are or will be used primarily for major structural improvements, or to correct defects which were not known at the time of the completion of the structure or which were caused by fire, flood, windstorm or other casualty.

§ 220.602 Nature of borrower's ownership.

To be eligible for insurance, the property to be improved must be held by the borrower in fee simple, or on leasehold under a lease for not less than 99 years which is renewable, or under a lease with a period of not less than 50 years to run from the date of the note.

§ 220.603 Supervision by Commissioner.

The Commissioner may regulate and restrict the borrower as long as the Commissioner is the insurer, holder or reinsurer of the loan. Such regulation or restriction may be in the form of a regulatory agreement, corporate charter or such other means as the Commissioner approves.

§ 220.610 Commitments to insure.

(a) *Conditions of committee.* Upon approval of an application for insurance, a commitment shall be issued by the Commissioner setting forth the terms and conditions upon which the loan will be insured.

(b) *Insurance of advances.* When the principal amount of the loan exceeds $40,000, the commitment may provide for the insurance of advances of loan money made during the construction of the improvements.

(c) *Insurance upon completion.* The commitment may provide for the insurance of the loan after completion of the improvements.

(d) *Renewal of commitment.* The commitment may be renewed or extended in such manner as the Commissioner may specify.

§ 220.611 Building loan agreement.

When the principal amount of the loan exceeds $40,000, and advances of loan money during the construction of the improvements are to be insured, the borrower and lender shall, prior to the initial endorsement of the loan for insurance, execute a building loan agreement approved by the Commissioner setting forth the terms and conditions on which progress payments may be advanced during construction.

§ 220.612 Assurance of completion.

When the principal amount of the loan exceeds $40,000, assurance of completion satisfactory to the Commissioner shall be furnished in an amount of at least 10 percent of the cost of the construction of the improvements to the project as estimated by the Commissioner and shall be in one of the following forms:

(a) A bond of a surety company satisfactory to the Commissioner on the standard form prescribed by the Commissioner with the borrower and lender as joint obligees.

(b) An escrow deposit with the lender or with a depository satisfactory to the lender and the Commissioner of cash or securities of, or fully guaranteed as to principal and interest by, the United States of America, under a completion assurance agreement prescribed by the Commissioner.

§ 220.613 Advance amortization requirements.

If prior to the beginning of amortization net income, as defined by the Commissioner, is received as the result of the rental of the property covered by the security instrument, such net income, to the extent determined by the Commissioner, shall be applied either to advance amortization or to offset the cost of project capital improvements which are approved by the Commissioner.

§ 220.614 Prevailing wage requirements.

When the property to be improved consists of a dwelling or dwellings for twelve (12) or more families, the following requirements shall be met:

(a) *Labor standards.* Any contract or subcontract executed for the performance of constructing the improvements

to the project shall comply with all applicable labor standards and provisions of the Regulations of the Secretary of Labor (29 CFR 5.1–5.12).

(b) *Ineligible contractors.* No contract shall be entered into with a general contractor or any subcontractor for the construction of improvements, if such contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established by the Commissioner or by the Comptroller General pursuant to the Regulations of the Secretary of Labor (29 CFR 5.6.(b)).

(c) *Ineligible advances.* Unless approved by the Commissioner, no advance under the loan shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed, on the ineligible list established by the Commissioner or by the Comptroller General pursuant to the provisions of the Regulations of the Secretary of Labor. (29 CFR 5.6.(b)).

(d) *Wage certificate.* No advance under the loan shall be eligible for insurance unless there is filed with the application for such advance a certificate as required by the Commissioner, certifying that the laborers and mechanics employed in contructing the improvements to the project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor prior to the beginning of construction and after the date of filing of the application for insurance.

§ 220.615 Discrimination prohibited.

Any contract or subcontractor executed for the performance of constructing the improvements to the project shall provide that there shall be no discrimination against any employee or applicant for employment because of race, color, creed or national origin.

§ 220.616 Certification of cost requirements.

Prior to initial endorsement of the loan for insurance, the borrower, the lender and the Commissioner shall enter into an agreement approved by the Commissioner for the purpose of precluding any excess of loan proceeds over the actual cost of the improvements to the project. Under this agreement the borrower shall agree to:

(a) Disclose its relationship with the builder, including any collateral agreement, and with subcontractors and suppliers;

(b) Enter into a construction contract the terms of which shall depend on whether or not there exists an identity of interest between the borrower and the builder.

(c) Execute a certificate of actual costs upon completion of the improvements; and

(d) Apply any excess of loan proceeds over the actual cost to the borrower of the improvements in reduction of the outstanding balance of the principal of the loan.

§ 220.620 Form of contract.

The form of contract between the borrower and the builder shall be in accordance with the following:

(a) *Lump sum contract.* If the Commissioner determines that neither the borrower nor any of the officers, directors or stockholders of the borrower have any interest in the builder or contractor, there may be used a lump sum of contract providing for payment of a specified amount.

(b) *Fixed fee contract.* If the Commissioner determines that the borrower, its officers, directors or stockholders have any interest, financial or otherwise in the builder or contractor, the form of contract shall provide for payment of the actual cost of construction not to exceed an upset price and may provide for payment of a builder's fixed fee not exceeding a reasonable allowance as established by the Commissioner in accordance with customary practices in the area.

§ 220.621 Certificate as to subcontracts.

If the Commissioner determines that the borrower, its officers, directors, or stockholders have any interest, financial or otherwise, in any subcontractor or material supplier, the borrower shall certify in form prescribed by the Commissioner, prior to final endorsement of the loan for insurance, that the amounts paid to such subcontractor or material supplier were not more than the rate prevailing in the locality for similar type of labor and materials.

§ 220.622 Certificate of actual cost.

The borrower's certificate of actual cost, in form prescribed by the Commissioner, shall be submitted upon completion of the physical improvements to the satisfaction of the Commissioner and prior to final endorsement and shall show the actual cost to the borrower of:

(a) The construction contract, including all costs of construction under a lump sum contract, after deduction of any kickbacks, rebates, trade discounts, or other similar payments to the borrower corporation, or to any of its officers, directors or stockholders;

(b) Architect's fees;

(c) Off-site public utilities and streets not included in the general contract;

(d) Organizational and legal work; and

(e) Other items of expense approved by the Commissioner.

§ 220.623 Fixed fee contract—additional certification.

When the work has been completed under a fixed fee contract, the borrower's certification shall also show:

(a) Allocations of general overhead items as are acceptable to the Commissioner;

(b) A reasonable allowance for the builder's profit as established by the Commissioner.

§ 220.624 Contractor's certification—fixed fee contract.

A contractor receiving a fixed fee shall certify in form prescribed by the Commissioner as to all actual costs paid for labor, materials, and subcontract work under the general contract exclusive of the builder's fee and less any kickbacks, rebates, trade discounts, or other similar payments to the builder or borrower corporation or any of its officers, directors or stockholders.

§ 220.625 Adjustment resulting from cost certification.

If the principal obligation of the loan exceeds the actual cost to the borrower of the improvement, the loan shall be reduced by the amount of such excess prior to the final endorsement for insurance.

§ 220.630 Records.

The borrower shall keep and maintain adequate records of all costs of any construction improvements or other costs items not representing work under the general contract and shall require the builder to keep similar records and, upon request by the Commissioner, shall make available for examination such records, including any collateral agreements.

§ 220.631 Certificate of public accountant.

The certificates of actual cost shall be supported by a certificate as to accuracy by an independent Certified Public Accountant or independent public accountant, which shall include a statement that the accounts, records and supporting documents have been examined in accordance with generally accepted auditing standards to the extent deemed necessary to verify the actual costs.

§ 220.632 Effects of agreement.

Any agreement, undertaking, statement or certification required in connection with cost certification shall specifically state that it has been made, presented and delivered for the purpose of influencing an official action of the Commissioner and may be relied upon as a true statement of the facts contained therein.

§ 220.633 Cost certification incontestable.

Upon the Commissioner's approval of the borrower's certification, such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the borrower.

§ 220.634 Amendment of regulations.

The regulations in this subpart may be amended by the Commissioner, but such amendment shall not adversely affect the interest of the mortgagee under the contract of insurance on any mortgage already insured or to be insured on which the Commissioner has made a commitment to insure.

§ 220.700 Effective date.

The provisions of this subpart are effective as to all mortgages on which the commitment to insure is issued to an approved mortgagee on or after October 15, 1954.

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surance benefits, receive payment in debentures of the Section 220 Housing Insurance Fund issued in accordance with

insurance, shall pay to the Commissioner a first loan insurance premium equal to one-half of one percent of the original

Insure Upon Completion, the lender on the date of the first principal payment shall pay a second premium equal to one-

Subpart D—Contract Rights and Obligations—Projects

Project Mortgage Insurance

§ 220.751 Incorporation by reference.

(a) All of the provisions of Part 207 of this chapter, covering mortgages insured under section 207 of the National Housing Act, apply with full force and effect to multifamily project mortgages insured under section 220 of the National Housing Act, except the following provisions:

Sec.
207.259 Insurance benefits.
207.264 Effective date.

(b) For the purposes of the portion of this subpart covering multifamily project mortgages all references in Part 207 of this chapter to section 207 of the National Housing Act shall be deemed to refer to section 220 of the National Housing Act and all references to the Housing Insurance Fund or the Housing Fund shall be construed to refer to the section 220 Housing Insurance Fund.

§ 220.752 Payment of insurance benefits.

All of the provisions of § 207.259 of this chapter shall govern the payment of insurance benefits on mortgages, including mortgages endorsed for insurance on or after July 7, 1961, on the basis of commitments outstanding prior to July 7, 1961, except that:

(a) In lieu of issuing debentures and making a cash adjustment, as provided in § 207.259, the Commissioner shall pay to the mortgagee in cash of the Section 220 Housing Insurance Fund an amount equivalent to the total face amount of the debentures and the cash adjustment provided for in § 207.259; and

(b) In computing the amount of the certificate of claim, the amount of the cash payment to the mortgagee, as provided in paragraph (a), shall be substituted for the face value of the debentures and the cash adjustment paid to the mortgagee; and

(c) In lieu of the cash payment provided in paragraph (a), mortgagees filing claim for insurance benefits on mortgages endorsed for insurance on or after July 7, 1961, on the basis of commitments outstanding prior to July 7, 1961, may upon filing a written request with the application for the payment of insurance benefits, receive payment in debentures of the Section 220 Housing Insurance Fund issued in accordance with the provisions of § 207.259 of this chapter.

Insured Project Improvement Loans

§ 220.800 Definitions.

All of the definitions contained in § 220.550 shall appy to §§ 220.800 et seq. In addition the following terms shall have the meaning indicated:

(a) "Contract of insurance" means the agreement evidenced by the endorsement of the Commissioner upon the note given in connection with an insured loan, incorporating by reference the regulations in §§ 220.800 et seq. and the applicable provisions of the Act.

(b) "Maturity" means the date on which the loan indebtedness would be extinguished if paid in accordance with periodic payments provided for in the loan.

§ 220.801 Initial endorsement of loan.

Upon compliance with the terms and conditions of a commitment, the Commissioner shall make an initial endorsement of the loan evidencing insurance by an appropriate panel or endorsement placed on the original note which shall identify the section of the Act and the regulations under which the loan is insured and the date of insurance.

§ 220.802 Final endorsement of loan.

After all advances under the loan have been made, the Commissioner shall, upon presentation of the original note, make a final endorsement of the original note which shall state the total of all advances approved for insurance by the Commissioner and show the date of such approval.

§ 220.803 Effect of loan endorsement.

The loan shall be insured from the date of initial endorsement. From the date of initial endorsement the Commissioner and lender shall be found by the Act and the provisions of the regulations in §§ 220.800 et seq. with the same force and effect as if a separate contract had been executed relating to the insured loan.

§ 220.804 Insurance premiums.

(a) *First premium.* The lender, upon the initial endorsement of the loan for insurance, shall pay to the Commissioner a first loan insurance premium equal to one-half of one percent of the original face amount of the note.

(b) *Second premium; first payment more than one year following initial endorsement.* If the date of the first principal payment is more than one year following the date of initial insurance endorsement, the lender, upon the anniversary of such insurance date, shall pay a second premium equal to one-half of one percent of the original face amount of the loan.

(c) *Third premium.* On the date of the first principal payment, the lender shall pay a third premium equal to one-half of one percent of the average outstanding principal obligation of the note for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the three premiums shall equal the sum of (1) one percent of the average outstanding principal obligation of the note for the year following the date of initial insurance endorsement and (2) one-half of one percent per annum of the average outstanding principal obligation of the note for the period from the first anniversary of the date of initial insurance endorsement to one year following the date of the first principal payment.

(d) *Second premium; first payment one year or less following initial endorsement.* If the date of the first principal payment is one year, or less than one year following the date of initial insurance endorsement, the lender upon such first principal payment date, shall pay a second premium equal to one-half of one percent of the average outstanding principal obligation of the note for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of (1) one percent per annum of the average outstanding principal obligation of the note for the period from the date of initial insurance endorsement to the date of first principal payment and (2) one-half of one percent of the average outstanding principal obligation of the note for the year following the date of the first principal payment.

(e) *Second premium; commitment to insure upon completion.* Where the note is initially and finally endorsed for insurance pursuant to a Commitment to Insure Upon Completion, the lender on the date of the first principal payment shall pay a second premium equal to one-half of one percent of the average outstanding principal obligation of the note for the year following such first principal payment date which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of one-half of one percent per annum of the average outstanding principal obligation of the note for the period from the date of the insurance endorsement to one year following the date of the first principal payment.

(f) *Annual insurance premium.* Until the note is paid in full, or until a claim application is received by the Commissioner or until the contract of insurance is otherwise terminated with the consent of the Commissioner, the lender, on each anniversary of the date of the first principal payment shall pay an annual loan insurance premium equal to one-half of one percent of the average outstanding principal obligation of the loan for the year following the date on which such premium becomes payable.

(g) *Method of premium payment.* Premiums shall be payable in cash. All premiums are payable in advance and no refund can be made of any portion thereof except as hereinafter provided in §§ 220.800 et seq.

(h) *Calculation of premiums.* The premiums payable on and after the date of the first principal payment shall be calculated in accordance with the amortization provisions without taking into account delinquent payments or prepayments.

§ 220.805 Termination of insupance.

All rights under the insurance contract and all obligations to pay future insurance premiums shall terminate upon compliance with one of the following conditions:

(a) Upon receipt by the Commissioner of a request for the termination of the loan insurance executed by the borrower and the lender, on a form prescribed by the Commissioner, and the submission of the note for cancellation of the insurance endorsement; or

(b) Upon receipt by the Commissioner of a notice, on a form prescribed by the Commissioner, executed by the lender of the prepayment in full of the note.

§ 220.806 Pro rata refund of insurance premium.

At the time of prepayment or voluntary termination of the loan insurance contract, the Commissioner will refund to the lender for the account of the borrower an amount equal to the pro rata portion of the current annual loan insurance premium theretofore paid, which is applicable to the portion of the year subsequent to the date of:

(a) Prepayment; or

(b) Receipt by the Commissioner of a request for voluntary termination.

§ 220.810 Definition of default.

(a) If the borrower fails to make any payments due under or provided to be paid by the terms of the note or security instrument and such default continues for a period of 30 days, the note or security instrument shall be considered in default for the purposes of §§ 220.800 et seq.

(b) The failure to perform any other covenant under the note or security instrument shall be considered a default, provided the lender because of such default, has exercised its right under the note or security instrument and accelerated the debt.

(c) If such defaults as defined in paragraphs (a) and (b) of this section continue for a period of 30 days, the lender shall be entitled to receive the benefits of the benefits of the insurance hereinafter provided.

§ 220.811 Date of default.

For the purposes of §§ 220.800 et seq., the date of default shall be considered as:

(a) The date of the first uncorrected failure to perform a covenant or obligation under the note or security instrument; or

(b) The date of the first failure to make a monthly payment which subsequent payments by the borrower are insufficient to cover when applied to the overdue monthly payments in the order in which they became due.

§ 220.812 Notice of default.

(a) If the default as defined in § 220.810 is not cured within the 30 day grace period, the lender shall, within 30 days thereafter, notify the Commissioner in writing of such default.

(b) The lender shall give notice in writing to the Commissioner of the failure of the borrower to comply with any covenant or obligation under the security instrument or note regardless of the fact the lender may not have elected to accelerate the debt.

§ 220.813 Commissioner's right to require acceleration.

Upon receipt of notice of the failure of the borrower to comply with any covenant or obligation under the security instrument or note, or otherwise being apprised thereof, the Commissioner reserves the right to require the lender to accelerate payment of the outstanding principal balance due in order to protect the interests of the Federal Housing Commissioner.

§ 220.814 Election of action.

Where a real estate mortgage, deed of trust, conditional sales contract, chattel mortgage, lien, judgment, or any other security device has been used to secure the payment of a loan made under the provisions of this section, the lender may not, except with the approval of the Commissioner, both proceed against such security and also make claim under its contract of insurance, but shall elect which method it desires to pursue.

§ 220.820 Maximum claim period.

Notice of intention to file claim on a form prescribed by the Commissioner shall be filed within 45 days after the lender becomes eligible for the benefits of the loan insurance, or within such later time as may be agreed upon by the Commissioner in writing.

§ 220.821 Items to be filed on submitting claim.

Within 30 days after the filing of the notice of intention to file claim, or within such further period as may be agreed upon by the Commissioner in writing, the lender shall file with the Commissioner:

(a) The fiscal data pertaining to the loan transaction;

(b) Receipts covering all disbursements as required by the fiscal data form;

(c) The original note and any security instrument or instruments which shall be assigned to the Commissioner without recourse or warranty, except that the lender must warrant that no act or omission of the lender has impaired the validity and priority of such security instrument or instruments, that the security instrument or instruments are prior to all mechanics' and materialmen's liens filed of record subsequent to the recording of such security instrument or instruments regardless of whether such liens attached prior to such recording date, and prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to the recording of such security instrument or instruments, except such liens or other matters as may be approved by the Commissioner, that the amount stated in the instrument of assignment is actually due and owing under the security instrument or instruments, that there are no offsets or counter claims thereto, and that the lender has a good right to assign such note and security instrument or instruments;

(d) All hazard insurance policies held on property serving as security for the loan, together with a copy of the lender's notification to the carrier authorizing the amendment of the loss payable clause substituting the Commissioner as the holder of the security instrument;

(e) The assignment to the Commissioner of all rights and interests arising under the note and security instrument or instruments so in default, and all claims of the lender against the borrower or others arising out of the loan transaction;

(f) All policies of title or other insurance or surety bonds, or other guarantees and any and all claims thereunder; including evidence satisfactory to the Commissioner that the original title coverage has been extended to include the assignment of the note and security instrument or instruments to the Commissioner.

(g) Any balance of the loan not advanced to the borrower;

(h) Any cash or property held by the lender or its agents or to which it is entitled; including deposits made for the account of the borrower and which have not been applied in reduction of the principle obligation under the note and security instrument or instruments;

(i) All records, ledger cards, documents, books, papers and accounts relating to the loan transaction;

(j) Any additional information or data which the Commissioner may require.

§ 220.822 Claim computation.

Upon an acceptable assignment of the note and security instrument, the Commissioner shall pay the claim of the lender in cash in an amount equal to the unpaid principal balance of the loan plus:

(a) Any accrued interest due on the loan.

(b) Any advances approved by the Commissioner made previously by the lender under the provisions of the note or security instrument or instruments.

(c) Reimbursement for such reasonable collection costs, court costs, and attorney's fees as may be approved by the Commissioner.

§ 220.823 Assignment of insured loans.

(a) An insured loan may not be transferred or pledged prior to the full disbursement of the loan, except with the prior written approval of the Commissioner which approval may be subject to such conditions and qualifications as the Commissioner may prescribe. Subsequent to full disbursement such loan may be transferred only to a transferee who is a lender approved by the Commissioner. Upon such transfer and the assumption by the transferee of all obligations under the contract of insurance the transferor shall be released from its obligations under the contract of insurance.

(b) The contract of insurance shall terminate with respect to loans described in paragraph (a) of this section upon the happening of either of the following events:

(1) The transfer or pledge of the insured loan to any person, firm, or corporation, public or private, other than an approved lender.

(2) The disposal by a lender of any partial interest in the insured loan by means of a declaration of trust or by a participation or trust certificate or by any other device, unless with the prior written approval of the Commissioner, which approval may be subject to such conditions and qualifications as the Commissioner in his discretion may prescribe: *Provided,* That this paragraph shall not be applicable to any loan so long as it is held in a common trust fund maintained by a bank or trust company

exclusively for the collective investment and reinvestment of moneys contributed estate, under the terms of certificates issued and sold more than three years

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FEES

Sec.
221.503 Application fee.

exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank or trust company in its capacity as a trustee, executor or administrator; and in conformity with the rules and regulations prevailing from time to time of the Board of Governors of the Federal Reserve System, pertaining to the collective investment of trust funds: *Provided further*, That this paragraph shall not be applicable to any loan so long as it is held in a common trust estate administered by a bank or trust company which is subject to the inspection and supervision of a governmental agency, exclusively for the benefit of other banking institutions which are subject to the inspection and supervision of a governmental agency, and which are authorized by law to acquire beneficial interests in such common trust estate, nor to any loan transferred to such a bank or trust company as trustee exclusively for the benefit of outstanding owners of undivided interest in the trust estate, under the terms of certificates issued and sold more than three years prior to said transfer, by a corporation which is subject to the inspection and supervision of a governmental agency.

§ 220.824 Amendments not to change contractual rights.

The regulations in §§ 220.800 et seq. may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendments shall not adversely affect the interests of a mortgagee under the contract of insurance on any loan already insured or to be insured on which the Commissioner has made a commitment to insure.

§ 220.950 Effective date.

Unless otherwise specified the provisions of this subpart shall be effective as to all mortgages with respect to which a commitment to insure is issued on or after July 7, 1961.

Subchapter C—Housing for Moderate Income and Displaced Families

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

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AUTHORITY: §§ 221.1 to 221.950 issued under sec. 211, 52 Stat. 23, as amended, sec. 221, 68 Stat. 599, as amended; 12 U.S.C. 1715b, 1715*l*.

Subpart A—Eligibility Requirements—Low Cost Homes

§ 221.1 Incorporation by reference.

(a) All of the provisions of Part 203 of this chapter concerning eligibility requirements of mortgages covering one- to four-family dwellings under section 203 of the National Housing Act apply to mortgages on dwellings insured under section 221 of the National Housing Act except the following provisions:

Sec.
203.17 Mortgage provisions.
203.18 Maximum mortgage amounts.
203.19 Mortgagor's minimum investment.
203.28 Economic soundness of project.
203.40 Location of property.
203.42 Rental properties.
203.50 et seq. Insured home improvement loans.
203.249 Effective date.

(b) For the purposes of this subpart all references in Part 203 of this chapter to section 203 of the Act shall be construed to refer to section 221 of the Act.

§ 221.5 Mortgage form.

The mortgage shall be executed upon a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated and shall be a first lien upon property that conforms with property standards prescribed by the Commissioner.

§ 221.10 Maximum mortgage amount—dollar limitation.

(a) A mortgage executed by a mortgagor who is an occupant of the property shall not exceed:

(1) $11,000 for a one-family residence;

(2) $18,000 for a two-family residence;

(3) $27,000 for a three-family residence;

(4) $33,000 for a four-family residence.

(b) In any geographical area where the Commissioner finds cost levels to require, the Commissioner may increase the dollar amount limitations set forth in (a) above to amounts not to exceed:

(1) $15,000 for a one-family residence;

(2) $25,000 for a two-family residence;

(3) $32,000 for a three-family residence;

(4) $38,000 for a four-family residence.

A mortgage secured by property upon which there is located a dwelling designed principally for a two-, three-, or four-family residence shall not be insured under this section except in the case of a dwelling for occupancy by a family displaced from an Urban Renewal Area or as a result of Governmental action.

§ 221.20 Maximum mortgage amount—loan-to-value limitation.

In addition to meeting the dollar limitations as set forth in this subpart, the mortgage shall be in an amount not to exceed:

(a) *Occupant mortgagors.* When the mortgagor is occupant of the property:

(1) The Commissioner's estimate of the appraised value of the property as of the date the mortgage is accepted for insurance, where repair and rehabilitation is not involved; or

(2) In the case of rehabilitation the amount of the mortgage shall not exceed the sum of the estimated cost of repair and rehabilitation and the Commissioner's estimate of the value of the property before repair and rehabilitation, except that in no case involving refinancing shall such mortgage exceed such estimated cost of repair and rehabilitation and the amount, as determined by the Commissioner, required to refinance the existing indebtedness secured by the property.

(b) *Non-occupant mortgagors.* If the property is to be built or acquired and rehabilitated for sale and the insured mortgage financing is required to facilitate the construction or the repair or rehabilitation of the dwelling and provide financing pending the subsequent sale thereof to a qualified owner-occupant, 85 percent of the amount computed under (a) or 85 percent of the value of the property, whichever is the lesser, as of the date the mortgage is accepted for insurance, if the mortgagor is not the occupant.

§ 221.25 Due date of mortgage.

The mortgage shall come due on the first day of the month.

§ 221.30 Maturity of mortgage.

(a) The mortgage shall provide for complete amortization not to exceed from the date of the beginning of amortization of the mortgage:

(1) 40 years in the case of a family

§ 221.45 Mortgage obligation in multi-

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to refer to the section 221 Housing In-

(1) 40 years in the case of a family displaced from an Urban Renewal Area or as a result of Governmental action;

(2) 35 years in the case of any other family if the mortgage is approved for insurance prior to the beginning of construction, except that the period in such case may be increased to not more than 40 years where the mortgagor is an owner-occupant of the property and is not able, as determined by the Commissioner, to make the required payments under a mortgage having a shorter amortization period;

(3) 30 years in the case of any other family where the mortgage is not approved for insurance prior to the beginning of construction.

(b) No mortgage shall have a maturity exceeding three-quarters of the Commissioner's estimate of the remaining economic life of the building improvements.

§ 221.32 Beginning of payments on mortgage.

The mortgage shall provide for payments to principal and interest to begin not later than the first day of the month following 60 days from the date the mortgagee's certificate on the commitment was executed.

§ 221.35 Disbursement of mortgage amount.

The entire principal amount of the mortgage shall be disbursed to the mortgagor or his creditors for the mortgagor's account and with his consent.

§ 221.40 Amortization period of the mortgage.

The amortization period of the mortgage shall be either 10, 15, 20, 25, 30, 35, or 40 years by providing for either 120, 180, 240, 300, 360, 420, or 480 monthly amortization payments.

§ 221.45 Mortgage obligation in multiples.

If the mortgage is not in excess of $15,000 it shall be in multiples of $50. If the mortgage exceeds $15,000 it shall be in multiples of $100.

§ 221.50 Mortgagor's minimum investment.

At the time a mortgage is insured the mortgagor shall have paid on account of the property at least three percentum of the Commissioner's estimate of its acquisition cost or if the mortgagor is displaced from an Urban Renewal Area or as a result of Governmental action, the mortgagor shall have paid on account of the property, not less than:

(a) $200 for a one-family dwelling;
(b) $400 for a two-family dwelling;
(c) $600 for a three-family dwelling;
(d) $800 for a four-family dwelling.

§ 221.54 Inclusion of closing costs and expenses in cash payment.

The mortgagor's required minimum investment may include amounts covering settlement costs, initial payments for taxes, hazard insurance premiums, mortgage insurance premiums, and other prepaid expenses as approved by the Commissioner.

§ 221.55 Deferred sale of properties.

A mortgagor under a mortgage covering a one-family dwelling may, subject to such terms and conditions as the Commissioner may prescribe, be permitted to sell the property to a displaced person on a deferred payment basis, to provide for the accumulation of the required cash payment.

§ 221.200 Effective date.

Unless otherwise specified, the provisions of this subpart shall be effective as to all mortgages with respect to which a commitment to insure is issued on or after July 7, 1961.

Subpart B—Contract Rights and Obligations—Low Cost Homes

§ 221.251 Incorporation by reference.

(a) All of the provisions of Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to mortgages on one- to four-family dwellings insured under section 221 of the National Housing Act except the following provisions:

Sec.	
203.341	Reimbursement for uncollected interest.
203.351	Application for debentures and fiscal data.
203.362	Conditions for withdrawal of application for debentures.
203.363	Reconveyance for noncompliance with regulations.
203.364	Mortgagee's liability for property expenditures.
203.377	Mortgagee's liability for waste.
203.378	Adjustment for waste.
203.379	Adjustment for fire, flood, earthquake or tornado damage.
203.382	Cancellation of hazard insurance.
203.400	Delivery of debentures.
203.401	Debenture computation—conveyed properties.
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203.408	Denomination of debentures.
203.409	Redemption of debentures.
203.410	Issue date of debentures.
203.411	Cash adjustment.
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203.421	Allocation of Mutual Mortgage Insurance Fund income or loss.
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203.423	Distribution of distributive shares.
203.424	Maximum amount of distributive shares.
203.425	Finality of determination.
203.435	Form of assignment to investing mortgagee.

(b) For the purposes of this subpart all references in Part 203 of this chapter to section 203 of the Act shall be construed to refer to section 221 of the Act and all references to the Mutual Mortgage Insurance Fund shall be construed to refer to the section 221 Housing Insurance Fund.

§ 221.255 Assignment option.

(a) The mortgagee has the option to assign, transfer and deliver to the Commissioner the original credit instrument and the insured mortgage securing the same, provided such mortgage is not in default at the expiration of 20 years from the date it was endorsed for insurance. When such option has been exercised, the obligation of the mortgagee to pay the premium charges shall cease.

(b) The mortgagee may exercise its assignment option within 1 year following the twentieth anniversary of the date the mortgage was endorsed for insurance.

(c) Upon the exercise of the assignment option the Commissioner shall issue to the assignor mortgagee debentures having a total face value equal to the amount of the original principal obligation of the mortgage which was unpaid on the date of the assignment, plus accrued interest to such date.

(d) The debentures issued pursuant to the exercise of an assignment option shall be dated as of the date the mortgage is assigned to the Commissioner and shall mature 10 years after such date.

(e) The debentures issued pursuant to the exercise of an assignment option shall bear interest at the "going Federal rate" at date of issuance. The "going Federal rate" means the annual rate of interest specified by the Secretary of the Treasury as applicable to the 6-month period which includes the issuance date of the debentures. The Secretary of the Treasury shall determine this applicable rate by estimating the average yield to maturity, on the basis of daily closing market bid quotations or prices during the month of May or the month of November, as the case may be, next preceding such 6-month period, on all outstanding marketable obligations of the United States having a maturity date of 8 to 12 years from the first day of May or November, as the case may be. If there should be no outstanding marketable obligations of the United States having the 8 to 12 year maturity at the time the Secretary of the Treasury is required to determine the debenture rate involved, the obligation next shorter than 8 years and the obligation next longer than 12 years respectively, shall be used.

(f) Debentures shall bear interest from the date of issue, payable semi-annually on the first day of January and the first day of July of each year at the rate in effect on the issue date, a date which shall be established as provided in § 203.410 of this chapter. The interest rate shall be established by the Commissioner in an amount not in excess of the annual rate of interest which the secretary of the Treasury shall specify as applicable to the 6-month period (consisting of January through June, or July through December) which includes the issuance date of such debentures; which applicable rate for each 6-month period shall be determined by the Secretary of the Treasury, at the request of the Commissioner, by estimating the average yield to maturity, on the basis of daily closing market bid quotations or prices during the calendar month next preceding the establishment of such rate of interest, on all outstanding marketable obligations of the United States having a maturity date of 15 years or more from the first day of such next preceding month, and by adjusting such estimated average annual yield to the nearest one-eighth of 1 per centum.

§ 221.260 Reimbursement for uncollected interest.

If payments received from the mortgagor during the period of special forbearance relief approved pursuant to § 203.340 of this chapter, are insufficient to pay interest at the mortgage rate, after applying such payments in the order set forth in the mortgage, and the mortgage is subsequently foreclosed, the insurance benefits shall include an allowance for uncollected interest accrued during the period of such forbearance.

§ 221.261 Application for insurance benefits and fiscal data.

On the date the assignment of the mortgage is filed for record the mortgagee shall forward to the Commissioner the prescribed application for insurance benefits and fiscal data pertaining to the mortgage transaction, together with receipts covering all disbursements, as required by the fiscal data form and other items as follows:

(a) *Credit and security instruments.* The original credit and security instruments assigned without recourse or warranty, except that no act or omission of the mortgagee shall have impaired the validity and priority of the mortgage;

(b) *Recorded assignment instrument.* The original of the recorded assignment of mortgage. If the original of the assignment is not available a copy shall be furnished and the original forwarded as soon as possible;

(c) *Hazard insurance.* All hazard insurance policies held in connection with the mortgaged property, together with a copy of the mortgagee's notification to the carrier authorizing the amendment of the loss payable clause substituting the Commissioner as the mortgagee;

(d) *Rights and interests.* An assignment of all rights and interests arising under the mortgage, and all claims of the mortgagee against the mortgagor or others arising out of the mortgage transaction;

(e) *Cash or property.* All cash or property held by the mortgagee or to which it is entitled, including deposits made for the account of the mortgagor and which have not been applied in reduction of the principal mortgage indebtedness;

(f) *Records and accounts.* All records, ledger cards, documents, books, papers and accounts relating to the mortgage transaction;

(g) *Additional information.* Any additional information or data which the Commissioner may require.

§ 221.265 Conditions for withdrawal of application for insurance benefits.

With the consent of the Commissioner, a mortgagee may withdraw an application for insurance benefits if the mortgagee agrees that it will:

(a) Accept a reconveyance of the property under a deed which warrants against the acts of the Commissioner and all claiming by, through, or under him; and

(b) Promptly file a reconveyance for record; and

(c) Accept without continuation the title evidence which it furnished the Commissioner; and

(d) Reimburse the Commissioner for property expenditures as set forth in § 203.364 of this chapter.

§ 221.266 Reconveyance for noncompliance with regulations.

If for any reason, the mortgagee fails to comply with the regulations in this subpart, the Commissioner may hold processing of the application for insurance benefits in abeyance for a reasonable period of time in order to permit the mortgagee to comply or, in the alternative, the Commissioner may reconvey title to the property to the mortgagee in which event the application for insurance benefits shall be considered as cancelled without prejudice to the rights of the mortgagee to reapply for insurance benefits at a subsequent date as approved by the Commissioner.

§ 221.267 Mortgagee's liability for property expenditures.

In the event the Commissioner acquires any property and thereafter incurs an expense or makes an expenditure incidental to such property and it subsequently becomes necessary to reconvey the property to the mortgagee, because of the mortgagee's noncompliance with the regulations in this subpart or because, with the consent of the Commissioner a mortgagee withdraws an application for insurance benefits, the mortgagee shall assume liability for payment of all expenses incurred and unpaid by the Commissioner and reimburse the Commissioner for all expenditures made from the date the deed to the Commissioner was filed for record to the date of reconveyance of the property to the mortgagee, after appropriate adjustment on account of any income received from the property.

§ 221.268 Mortgagee's liability for waste.

(a) The mortgagee's liability for damage caused by waste shall not apply to mortgages on which the unpaid principal obligation (as increased by the amount of any open-end advances) at the time of the institution of foreclosure proceedings or the date of acquisition of the property otherwise after default exceeds 75 percent of the appraised value of the property as of the date the mortgage was accepted for insurance, and in any event, the obligation of the mortgagee to repair waste shall be limited to the amount of $100 for each family dwelling unit covered by the mortgage.

(b) Damage by waste, as defined in this subpart, which in the Commissioner's judgment does not exceed $25 shall not be considered as substantial injury and shall not be deducted from the insurance benefits settlement.

§ 221.269 Adjustment for waste.

If the property has been damaged by waste as defined in § 203.376 of this chapter, the Commissioner shall deduct from the insurance benefits to be issued to the mortgagee an amount not to exceed the Commissioner's estimate of the cost of repairing the waste damage but not to exceed the limitation of $100 for each family dwelling unit covered by the mortgage.

§ 221.270 Adjustment for fire, flood, earthquake or tornado damage.

If the property has been damaged by fire, flood, earthquake or tornado, such damage shall be repaired prior to conveyance of the property or the assignment of the mortgage to the Commissioner, except that if prior approval of the Commissioner is obtained the damaged property may be conveyed to him or mortgage assigned to him and he shall deduct from insurance benefits an amount not to exceed the greater of (a) his estimate of the cost of repairing such damage or (b) the insurance recovery.

§ 221.272 Cancellation of hazard insurance.

The mortgagee shall cancel any hazard insurance policy as of the date of the filing for record of the deed to the Commissioner subject to the following conditions:

(a) The amount of the return premium due the mortgagee because of such cancellation may be calculated on a "short-rate" basis and reported on fiscal data supporting the application for insurance benefits and the amount shall be deducted from the total amount claimed.

(b) If the mortgagee's calculation of the return premium is less than the actual return, the amount of the difference between the actual refund and the calculated amount shall be remitted to the Commissioner, accompanied by the carrier's or agent's statement.

(c) If the mortgagee's calculation of the return premium is more than the actual return, the mortgagee may file with the Commissioner a claim, supported by the carrier's or agent's statement of the amount of the refund, whereupon the Commissioner shall issue a check to the mortgagee in settlement of the claim.

§ 221.275 Payment of insurance bene-

thirds of such costs or $75, whichever is the greater;

sioner, including reasonable attorney's fees, unpaid interest, and cost of repairs

(b) With respect to mortgages endorsed for insurance on or after July 7,

§ 221.275 Payment of insurance benefits.

If the application for insurance benefits is acceptable to the Commissioner he shall deliver to the mortgagee cash of the Section 221 Housing Insurance Fund.

§ 221.276 Insurance benefits computation—conveyed properties.

The cash settlement shall be determined by adding to the original principal of the mortgage (as increased by the amount of open-end advances made by the mortgagee and approved by the Commissioner) which was unpaid on the date of the institution of foreclosure proceedings, the acquisition of the property otherwise after default, or the property was acquired by the Commissioner under a direct conveyance by the mortgagor, the amount of all payments made by the mortgagee and allowances for items as set forth in § 221.277 less all items as set forth in § 221.278.

§ 221.277 Insurance benefits computation—conveyed properties; items included.

The amount of the cash settlement in connection with properties conveyed to the Commissioner shall include the following items:

(a) Taxes, ground rent and water rates, which are liens prior to the mortgage;

(b) Special assessments, which are noted on the application for insurance or which become liens after the insurance of the mortgage;

(c) Hazard insurance on the mortgaged property;

(d) MIP or open-end insurance charges paid after the institution of foreclosure proceedings or the acquisition of the property by direct conveyance or otherwise after default;

(e) Taxes imposed upon any deeds or other instruments by which said property was acquired by the mortgagee and transferred or conveyed to the Commissioner;

(f) Foreclosure costs or costs of acquiring the property otherwise (including costs of acquiring the property by the mortgagee and of conveying and evidencing title to the property to the Commissioner) actually paid by the mortgagee and approved by the Commissioner in an amount not in excess of two-thirds of such costs or $75, whichever is the greater;

(g) Reasonable payments made by the mortgagee, with the approval of the Commissioner, for the purpose of protecting, operating, or preserving the property;

(h) Any uncollected mortgage interest allowed pursuant to an approved forbearance plan.

§ 221.278 Insurance benefits computation—conveyed properties; items deducted.

There shall be deducted from the total of the added items in §§ 221.276 and 221.277 any amount received on account of the mortgage after the institution of foreclosure proceedings or the acquisition of the property by direct conveyance or otherwise after default and from any source relating to the property on account of rent or other income after deducting reasonable expense incurred in handling the property.

§ 221.279 Insurance benefits computation—assigned mortgages.

Upon an acceptable assignment of a mortgage the Commissioner shall issue to the mortgagee cash equal to the unpaid balance of the loan at the time of assignment, plus any accrued mortgage interest and any advances made under the mortgage and approved by the Commissioner.

§ 221.285 Delivery of certificate of claim.

In addition to the cash settlement provided for in this subpart with respect to properties conveyed to the Commissioner, the Commissioner shall deliver to the mortgagee a certificate of claim in accordance with section 204(e) of the Act, which shall become payable, if at all, in accordance with section 204(f) of the Act.

§ 221.286 Amount and items of certificate of claim.

The certificate shall be for an amount which the Commissioner determines to be sufficient to pay all amounts due under the mortgage and not covered by the amount of cash settlement. The certificate shall include a reasonable amount for necessary expenses incurred by the mortgagee in connection with the foreclosure proceedings or the acquisition of the mortgaged property otherwise and the conveyance thereof to the Commissioner, including reasonable attorney's fees, unpaid interest, and cost of repairs to the property made by the mortgagee to remedy the waste.

§ 221.450 Effective date.

(a) Unless otherwise specified the provisions of this subpart are effective as to all loans and mortgages on which commitments to insure are issued on or after July 7, 1961.

(b) With respect to mortgages endorsed for insurance on or after July 7, 1961, pursuant to commitments outstanding prior to July 7, 1961, a mortgagee may, upon filing a written request with the application for the payment of insurance benefits, receive payment as provided in Part 203 of this chapter in lieu of the insurance benefits provisions of this subpart.

Subpart C—Eligibility Requirements—Moderate Income Projects

§ 221.501 Certificate by Administrator to Commissioner.

Before a mortgage executed by a mortgagor other than a private mortgagor shall be eligible for insurance under this subpart, the Housing and Home Finance Administrator must certify to the Commissioner that the community in which the project is to be located has submitted to the Administrator a "workable program" which has been approved by the Administrator.

§ 221.502 Application.

An application for insurance of a mortgage on a project shall be submitted by a mortgagee and by the sponsors of such project through the local FHA office on an approved FHA application form. No application shall be considered unless accompanied by the exhibits called for by the form.

FEES

§ 221.503 Application fee.

An application fee of $1.50 per thousand dollars of the amount of the loan applied for shall accompany the application.

§ 221.504 Commitment fee.

A commitment fee which, when added to the application fee, will aggregate $3.00 per thousand dollars of the face amount of the loan set forth in the commitment, shall be paid within thirty days after the date of the commitment or within such additional period as the Commissioner may allow.

§ 221.505 Inspection fee.

The commitment may provide for the payment of an inspection fee in an amount not to exceed $5.00 per thousand dollars of the amount of the loan set forth in the commitment.

§ 221.506 Fees on increased mortgage.

Upon application for an increase in the amount of an existing commitment an additional application fee of $1.50 per thousand dollars shall be paid based upon the amount of such increase. Such increase shall be subject to the payment of an additional commitment fee which, when added to the additional application fee, will aggregate $3.00 per thousand dollars of the amount of the increase. If the amount of the insured mortgage is increased after insurance and prior to final endorsement either by amendment or by the substitution of a new insured mortgage, the fees herein provided for, including the inspection fee, shall be based upon the amount of the increase.

§ 221.507 Refund of fees.

If an application is rejected before it is assigned for processing by the Commissioner, or in such other instances as the Commissioner may determine, the entire fee or any portion thereof may be returned to the applicant.

§ 221.508 Charges by mortgagee.

The mortgagee may collect from the mortgagor the amount of the fees provided for in this subpart and may charge the mortgagor an initial service charge to reimburse itself for the cost of closing the transaction, in an amount not to exceed 1½ percent of the original principal amount of the mortgage. Any additional charges shall be subject to prior approval of the Commissioner.

COMMITMENT

§ 221.509 Issuance of commitment.

(a) Upon approval of an application a commitment will be issued setting forth the terms and conditions upon which the mortgage will be insured, including special requirements applicable to the project and requiring the submission in final form within a time specified of all appropriate documents, drawings, plans, specifications, and other instruments evidencing full compliance satisfactory to the Commissioner with the provisions of this subpart and with such terms and conditions.

(b) The commitment may provide for advances of mortgage money during construction and the insurance of such advances as made, or it may provide for the insurance of the mortgage after completion of the improvements.

(c) No commitment shall be valid unless signed by the Commissioner or his agent authorized for that purpose, and shall, with respect to commitments to insure advances, be effective for a stated period, not in excess of 120 days, provided that the commitment fee shall have been paid as required. A commitment may be renewed in such manner as the Commissioner may from time to time specify.

ELIGIBLE MORTGAGORS

§ 221.510 Eligible mortgagors.

A mortgage shall be executed by a mortgagor meeting the following qualifications:

(a) *Non profit mortgagor.* The mortgagor shall be a corporation or association organized for purposes other than the making of profit or gain for itself or persons identified therewith and which the Commissioner finds is in no manner controlled by nor under the direction of persons or firms seeking to derive profit or gain therefrom. Such a mortgagor shall be regulated or supervised under federal or state laws or by political subdivisions of states or agencies thereof, or the Federal Housing Commissioner, as to rents, charges, and methods of operation. The regulation or supervision of the mortgagor shall be in such manner as, in the opinion of the Commissioner, will effectuate the purposes of this subpart.

(b) *Public mortgagors.* A federal instrumentality, a state or political subdivision thereof, or an instrumentality of a state or of a political subdivision thereof, which certifies that it is not receiving financial assistance from the United States exclusively pursuant to the U.S. Housing Act of 1937 and which is acceptable to the Commissioner. Such a mortgagor shall be regulated or supervised as to rents, charges and methods of operation in such manner as, in the opinion of the Commissioner, will effectuate the purposes of this subpart.

(c) *Limited dividend corporation.* The mortgagor shall be a corporation restricted as to distributions of income by the laws of the state of its incorporation or by the Commissioner, formed exclusively for the purpose of providing housing, and regulated as to rents, charges, rate of return, and methods of operation in such form and manner as is satisfactory to the Commissioner to effectuate the purposes of this subpart.

(d) *Cooperative and investor sponsor mortgagors.* (1) The cooperative mortgagor shall be a nonprofit cooperative ownership housing corporation approved by the Commissioner which restricts permanent occupancy of the project to the members of the corporation and which requires membership eligibility and transfers of membership in a manner approved by the Commissioner.

(2) The investor sponsor mortgagor shall be a special type of limited dividend corporation approved by the Commissioner which is organized to:

(i) Construct or rehabilitate a multifamily project, and transfer the project to a cooperative mortgagor within two years from the date of completion;

(ii) Operate the project until two years from the date of completion or until the conveyance to the cooperative mortgagor, whichever occurs sooner, subject to special controls and requirements of the Commissioner, including but not limited to, the disposition of net income;

(iii) To operate the project, in the event of failure to convey to a cooperative mortgagor within the two year period, as a limited dividend corporation subject to the controls and requirements of the Commissioner.

(3) Such a mortgagor will be regulated or restricted by the Commissioner as to rents or sales, charges, rate of return, and methods of operation in such manner as, in the opinion of the Commissioner, will effectuate the purposes of this subpart and protect the consumer interest.

(e) *Private mortgagors.* Any mortgagor approved by the Commissioner, which until the termination of all obligations of the Commissioner under the insurance contract and during such further period of time as the Commissioner shall be the owner, holder, or reinsurer of the mortgage, is regulated or restricted by the Commissioner as to rents or sales, charges, capital structure, rate of return, and methods of operation, in such manner as, in the opinion of the Commissioner, will effectuate the purposes of this subpart.

ELIGIBLE MORTGAGES

§ 221.511 Mortgage form.

The mortgage shall be:

(a) Executed on a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated, which form shall not be changed without the prior written approval of the Commissioner.

(b) In the case of cooperative and investor sponsor mortgagors, the mortgage shall provide that the mortgagor will not arrange for management of the property except in the manner and under an agreement approved by the mortgagee and the Commissioner in writing.

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§ 221.512 Disbursement of the mort-

improvements are completed. The re-

(d) *Maximum mortgage amount—*

private or limited dividend corporation

tion fee, will aggregate $3.00 per thousand dollars of the amount of the in-

as the Commissioner may from time to time specify.

and transfers of membership in a manner approved by the Commissioner.

agreement approved by the mortgagee and the Commissioner in writing.

§ 221.512 Disbursement of the mortgage.

The mortgagee shall be obligated, as a part of the mortgage transaction, to disburse the principal amount of the mortgage, to, or for the account of the mortgagor or to his creditors for his account and with his consent.

§ 221.513 Mortgage lien.

A mortgagor shall certify at final endorsement of the loan for insurance that:

(a) The property covered by the mortgage is free and clear of all liens other than the insured mortgage and such other liens as may be approved by the Commissioner.

(b) There will not be outstanding any unpaid obligation contracted in connection with the mortgage transaction, the purchase of the mortgaged property, or the construction of the project, except obligations approved by the Commissioner.

§ 221.514 Maximum mortgage amounts.

(a) *Principal obligation.* The mortgage shall involve a principal obligation not in excess of the lesser of the following:

(1) *Dollar limitations.* (i) $12,500,000.00;

(ii) $2,250 per room (or $8,500 per family unit if the number of rooms in such property or project is less than four per family unit) for such part of such project as may be attributable to dwelling use exclusive of the cost of exterior land improvements as determined by the Commissioner.

(2) *New construction.* (i) In the case of new construction where the mortgagor is other than a private or limited dividend corporation mortgagor, the Commissioner's estimate of replacement cost of the property or project when the improvements are completed (the replacement cost may include the land, the proposed physical improvement, utilities within the boundaries of the land, architects' fees, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the Commissioner);

(ii) In the case of new construction where the mortgagor is a private or a limited dividend corporation mortgagor, 90 percent of the Commissioner's estimate of the replacement cost of the property or project when the proposed improvements are completed. The replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architects' fees, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the Commissioner and shall include an allowance for builders' and sponsors' profit and risk of 10 percent of the foregoing items exclusive of land unless the Commissioner, after determining such allowance is unreasonable, prescribes a lesser percentage.

(3) *Repair or rehabilitation.* (i) In the case of a project which is to be repaired or rehabilitated where the mortgagor is other than a private or limited dividend corporation mortgagor, the sum of the estimated cost of the repairs and rehabilitation of the project and the Commissioner's estimate of the value of the property before repair and rehabilitation.

(ii) In the case of a project which is to be repaired or rehabilitated where the mortgagor is a private or a limited dividend corporation mortgagor, 90 percent of the sum of the estimated cost of the repairs and rehabilitation of the project and the Commissioner's estimate of the value of the property before repair and rehabilitation.

(iii) In no case involving refinancing shall such mortgage exceed such estimated cost of repair and rehabilitation and the amount, as determined by the Commissioner, required to refinance an existing indebtedness secured by the property or project.

(b) *Increased mortgage amount—elevator type structures.* In order to compensate for the higher costs incident to the construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitation of $2,250 per room to not to exceed $2,750 per room and the dollar amount limitation of $8,500 per family unit to not to exceed $9,000 per family unit.

(c) *Increased mortgage amount—high cost areas.* In any geographical area where the Commissioner finds cost levels so require, he may increase the dollar amount limitation by an amount not to exceed $1,000 per room without regard to the number of rooms being less than four or more than four.

(d) *Maximum mortgage amount—leaseholds.* The maximum mortgage amount is subject to reduction by an amount equal to the capitalized value of the ground rent in the event the mortgage is on a leasehold estate rather than on a fee simple holding.

(e) *Increased mortgage amount—operating losses.* When the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project, excluding depreciation, covered by such mortgage during the first two years following final endorsement exceed the project income, the Commissioner may, in his discretion and upon such terms and conditions as he may prescribe, permit the excess of the foregoing expenses over the project income to be added to the amount of such mortgage, and extend the coverage of the mortgage insurance thereto, and such additional amount shall be deemed to be part of the original face amount of the mortgage.

§ 221.515 Adjusted mortgage amount—rehabilitation projects.

A mortgage having a principal amount computed in compliance with this section, and which involves a project to be repaired or rehabilitated, shall be subject to the following additional limitations:

(a) *Property held in fee.* If the mortgagor is the owner of an unencumbered fee simple estate, the maximum mortgage amount shall not exceed 100 percent of the Commissioner's estimate of the cost of the proposed repairs or rehabilitation;

(b) *Property subject to existing mortgage.* If the mortgagor owns the project subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the maximum mortgage amount shall not exceed:

(1) *Nonprofit, public, cooperative or investor sponsor mortgagor.* If the mortgagor is a nonprofit, public, cooperative or investor sponsor mortgagor, the Commissioner's estimate of the cost of the repair or rehabilitation plus such portion of the outstanding indebtedness as does not exceed the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation; or

(2) *Private or limited dividend corporation mortgagor.* If the mortgagor is a private or limited dividend corporation mortgagor, the Commissioner's estimate of the cost of repair or rehabilitation plus such portion of the outstanding indebtedness as does not exceed 90 percent of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation.

(c) *Property to be acquired.* If the project is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the maximum mortgage amount shall not exceed:

(1) *Nonprofit, public, cooperative, or investor sponsor mortgagor.* If the mortgagor is a nonprofit, public, cooperative or investor sponsor mortgagor, the Commissioner's estimate of the cost of the proposed repair or rehabilitation plus the actual purchase price of the land and improvements, but not in excess of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation; or

(2) *Private or limited dividend corporation mortgagor.* If the mortgagor is a private or limited dividend corporation mortgagor:

(i) 90 percent of the Commissioner's estimate of the cost of the repair or rehabilitation, plus

(ii) 90 percent of the actual price of the land and improvements, or the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation, whichever is the lesser as provided in this subdivision (ii).

§ 221.516 Maturity.

The mortgage shall have a maturity satisfactory to the Commissioner and shall contain complete amortization or sinking-fund provisions satisfactory to the Commissioner.

§ 221.517 Payment requirements.

(a) *Method of payment.* The mortgage shall provide for monthly payments on the first day of each month on account of interest and principal and shall provide for payments in accordance with an amortization plan as agreed upon by the mortgagor, the mortgagee and the Commissioner.

(b) *Date of first payment to principal.* The Commissioner shall estimate the time necessary to complete the project

and shall establish the date of the first payment to principal so that the lapse of time between completion of the project and commencement of amortization will not be longer than necessary to obtain sustaining occupancy.

§ 221.518 Maximum interest rate.

(a) The mortgage shall bear interest, at a rate not exceeding 5½ percentum per annum, as may be agreed upon between the mortgagor and mortgagee.

(b) In the case of a mortgage executed by other than a private mortgagor, as defined in § 221.510(e), the Commissioner may, in his discretion, provide that such mortgage shall bear interest at a rate not to exceed 5¼ per centum per annum up to and including the date of the final endorsement by the Commissioner at which time the rate of interest shall be lowered to the rate determined by the Secretary of the Treasury pursuant to section 221(d)(5) of the Act. Such rate has been fixed at 3⅛ percent per annum.

§ 221.519 Mortgage to cover the entire property.

The mortgage shall cover the entire property included in the housing project.

§ 221.520 Covenant against liens.

The mortgage shall contain a covenant against the creation by the mortgagor of liens against the property superior or inferior to the lien of the mortgage.

§ 221.521 Covenant for hazard insurance.

The mortgage shall contain a covenant acceptable to the Commissioner binding the mortgagor to keep the property insured by a standard policy or policies against fire and such other hazards as the Commissioner, upon the insurance of the mortgage, may stipulate, in an amount which will comply with the coinsurance clause applicable to the location and character of the property, but not less than 80 percent of the actual cash value of the insurable improvements and equipment of the project. The initial coverage shall be in amount estimated by the Commissioner at the time of completion of the entire project or units therefor. The policies evidencing such insurance shall have attached thereto a standard mortgagee clause making loss payable to the mortgagee and the Commissioner, as their interests may appear.

§ 221.522 Accumulation of accruals.

(a) Except in the case of mortgages bearing interest at the rate set out in § 221.518(b), the mortgage shall provide for payments by the mortgagor to the mortgagee on each interest payment date of an amount sufficient to accumulate in the hands of the mortgagee one payment period prior to its due date, the next annual mortgage insurance premium payable by the mortgagee to the Commissioner. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) In the case of all mortgages insured under this subpart, the mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize the ground rents, if any, and the estimated amount of all taxes, water rates and special assessments, if any, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become delinquent. The mortgage shall further provide that such payments shall be held by the mortgagee, for the purpose of paying such ground rents, taxes, water rates and assessments, and insurance premiums, before the same become delinquent. The mortgage must also make provision for adjustments, in case the estimated amount of such taxes, water rates and assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor.

§ 221.523 Application of payments.

(a) The mortgage shall provide that all monthly payments being made by the mortgagor to the mortgagee shall be added together and the aggregate thereof shall be paid by the mortgagor upon each monthly payment date in a single payment. The mortgagee shall apply the same to the following items in the order set forth:

(1) Premium charges under the contract of insurance, where applicable.

(2) Ground rents, taxes, special assessments and fire and other hazard insurance premiums.

(3) Interest on the mortgage.

(4) Amortization of the principal of the mortgage.

(b) Any deficiency in the amount of the aggregate monthly payment shall constitute an event of default. The mortgage shall further provide for a grace period of thirty days, within which time the default must be cured.

§ 221.524 Prepayment privileges.

(a) *Prepayment in full.* The mortgage indebtedness may be prepaid in full and the Commissioner's controls terminated only upon the condition that the Commissioner's prior consent is obtained and upon such terms and conditions as the Commissioner may prescribe, except that, in the case of a limited dividend corporation mortgagor, the mortgage indebtedness may be prepaid in full at any time after the expiration of 20 years from the date of final endorsement of the mortgage.

(b) *Partial prepayments.* With the prior written approval of the Commissioner, partial prepayments may be made for the purpose of reducing succeeding monthly payments of the remaining balance as recast over the remaining portion of the original mortgage term.

(c) *Optional provision.* The mortgage may, if required by the mortgagee, contain a provision that, prior to maturity, and with the approval of the Commissioner, partial prepayments may be made, after thirty days' written notice to the mortgagee, on any principal payment date. If prepayments are made in any calendar year in excess of 15 percent of the original face amount of the mortgage, the mortgagee will be permitted to collect such reasonable charge on such excess as is agreed upon between the mortgagor and the mortgagee.

§ 221.525 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed 2 cents for each dollar of each payment to interest and principal more than 15 days in arrears, to cover the extra expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

§ 221.526 Issuance of bonds.

In the event that bonds are to be issued as a part of the insured mortgage transaction, all arrangements with respect to the issuance and sale of such bonds shall be subject to approval by the Commissioner.

§ 221.527 Mortgage covenant regarding racial restrictions and use of property.

(a) The mortgage shall contain a covenant by the mortgagor that until the mortgage has been paid in full, or the contract of insurance otherwise terminated, he will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the mortgaged property on the basis of race, color, or creed. Such covenant shall be binding upon the mortgagor and his assigns and shall provide that upon violation thereof, the mortgagee may, at its option, declare the unpaid balance of the mortgage immediately due and payable.

(b) The mortgage shall contain a covenant prohibiting the use of the property covered thereby for any purpose other than that for which it was intended at the date the mortgage was executed.

ELIGIBLE MORTGAGEES

§ 221.528 Qualification of lenders.

The provisions of 203.1–203.9 of Part 203 of Subchapter C of this chapter shall govern the eligibility qualifications and requirements of mortgagees under this subpart.

SUPERVISION OF MORTGAGORS

§ 221.529 Form of regulation by Commissioner.

The Commissioner may regulate and restrict the mortgagor as long as the Commissioner is the insurer, holder or reinsurer of the mortgage. Such regulation or restriction may be in the form of a regulatory agreement, corporate charter or such other means as the Commissioner approves.

§ 221.530 Supervision applicable to all mortgagors.

(a) No charge shall be made by the mortgagor for accommodations, facilities, or services offered by the project except those approved in writing by the Commissioner.

(b) *The mortgagor shall maintain its project, the ground, buildings, and equipment appurtenant thereto, in good repair and will promptly complete necessary re-*

pairs and maintenance as required by the Commissioner.

(c) A fund for replacements shall be accumulated and maintained with the mortgagee and the amount and type of such fund and the conditions under which it shall be accumulated, replenished and used, shall be specified in the charter, trust agreement, or regulatory agreement.

(d) The mortgagor, its property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and papers shall be subject to inspection and examination by the Commissioner or his duly authorized agent at all reasonable times.

(e) The mortgagor shall execute and deliver to the Commissioner a certificate that the books and accounts of the mortgagor will be established and maintained in a manner satisfactory to the Commissioner on the date the certificate is executed. Such certificate shall be to the effect that, so long as the mortgage is insured or held by the Commissioner, the mortgagor's books and accounts will be kept in accordance with the requirements of the Commissioner; will be in such form as to permit a speedy and effective audit and as may otherwise be prescribed by the Commissioner; will be maintained for such periods of time as may be prescribed by the Commissioner; and will be available to the Commissioner and to the Comptroller General of the United States for such examination and audit as they may desire to make. The mortgagor shall file with the Commissioner and mortgagee the following reports verified by the signature of such officers of the mortgagor as the Commissioner may designate and in such form as prescribed by the Commissioner:

(1) Monthly occupancy reports when required by the Commissioner;

(2) Complete annual financial reports based upon examinations of the books and records of the mortgagor, prepared in accordance with the requirements of the Commissioner, certified to by an officer of the mortgagor and, when required by the Commissioner, prepared and certified by a Certified Public Accountant (or other person acceptable to the Commissioner), such reports to be submitted within sixty (60) days after the end of each fiscal year;

(3) Specific answers to questions upon which information is desired from time to time relative to the actual cost of construction, the disposition of mortgage funds, the operation and condition of the property and the status of the insured mortgage;

(4) Properly certified copies of minutes of meetings of directors, officers, stockholders, shareholders, or beneficiaries.

§ 221.531 Supervision applicable to private mortgagors.

The following restrictions and regulations will be applicable to private mortgagors:

(a) *Capital structure.* (1) The number of shares of capital stock, in the case of a corporation, may be issued in such amounts and form as may be agreed upon by the sponsors and the Commissioner prior to the endorsement of the mortgage for insurance; and

(2) In the case of a trust entity, beneficial certificates of interest may be issued in such amounts and form as may be agreed upon by the mortgagor and the Commissioner.

(b) *Rate of return.* Dividends or other disbursements as defined in the charter, trust agreement, or regulatory agreement may be declared or made only as of and after the end of an annual or semiannual period. No dividends or other disbursements shall be declared or made except out of surplus cash legally available and remaining after:

(1) The payment of:

(i) All sums due or currently required to be paid under the terms of any mortgage or note insured or held by the Commissioner;

(ii) All amounts required to be deposited in the reserve fund for replacements;

(iii) All obligations of the project other than the mortgage insured or held by the Commissioner unless funds for payment are set aside or deferment of payment has been approved by the Commissioner.

(2) The segregation of:

(i) An amount equal to the aggregate of all special funds required to be maintained by the project;

(ii) All tenant security deposits held.

No distribution of any kind may be made from borrowed funds.

(c) *Rents and charges.* In approving the allowable rents and charges and in passing upon applications for changes, consideration will be given to the following and similar factors:

(1) Rental income necessary to maintain the economic soundness of the project.

(2) Rental income necessary to provide a reasonable return on the investment consistent with providing reasonable rentals to tenants.

(d) *Mortgagor's equity investment.* Unless it can be established to the satisfaction of the Commissioner, prior to the final endorsement of the mortgage for insurance, that the mortgagor has an investment in the project, represented by cash expenditures, in an amount equal to three percent (3%) of the total cost of the project as certified by the mortgagor and approved by the Commissioner, there shall be deposited in a special fund an amount equal to the difference between such three percent (3%) and the amount of any such investment for necessary expenses incident to the completion of the project. Disbursements from any such fund, prior to three years from the date of the final or initial-final endorsement of the mortgage for insurance, may be made only with the prior written approval of the Commissioner.

§ 221.532 Supervision applicable to limited dividend corporation mortgagors.

The provisions of § 221.531(b) (rate of return) of this subpart shall apply to limited dividend corporation mortgagors except that the amount of such allowable dividend or disbursement from surplus cash shall not exceed in any one fiscal year more than a six percent (6%) return on the amount of equity invested in such limited dividend corporation, and the right to such dividend or disbursement from surplus cash shall not be cumulative.

§ 221.533 Supervision applicable to cooperative and investor sponsor mortgagors.

(a) The mortgagor shall not permit occupancy except under an occupancy agreement or lease approved by the Commissioner.

(b) Except with the prior written approval of the Commissioner, no compensation shall be paid by the corporation to its officers or directors, as such, or to any person or corporation for supervising or managerial service. No compensation shall be paid by the corporation to any employee in excess of an amount agreed upon by the Commissioner and specified in the charter. No officer, director, stockholder, agent, or employee of the corporation shall in any manner become indebted to the corporation except on account of approved occupancy charges.

§ 221.534 Supervision applicable to cooperative mortgagors.

(a) A general operating reserve shall be established and maintained as long as the mortgage insurance is in force, in a manner and for the purposes specified in the charter or regulatory agreement.

(b) Surplus funds, after meeting reserves and after meeting all obligations of the mortgagor, may be disbursed to the members in the form of reduced carrying charges or reduced sales prices of the dwelling accommodations, or patronage refunds.

§ 221.535 Supervision applicable to investor sponsor mortgagors.

(a) *Investor sponsor equity.* The investor sponsor's profit allowance shall be held by the mortgagee and shall not be paid to the investor sponsor unless the project is transferred to a cooperative mortgagor within two years from the date of completion. In the event of default or failure to transfer the project to a cooperative mortgagor within the two-year period, the profit allowance shall be applied against the mortgage or in such other manner as the Commissioner may direct. The amount of the profit allowance applied against the mortgage together with any other equity of the investor sponsor mortgagor approved by the Commissioner shall be deemed to be the equity of the investor sponsor mortgagor for purposes of determining its operations as a limited dividend corporation.

(b) *Transfer to cooperative mortgagor.* The consideration for the transfer to a cooperative mortgagor shall be solely the assumption of the mortgage indebtedness.

Occupancy Requirements

§ 221.536 Occupancy requirements applicable to all mortgagors.

The mortgagor shall certify under oath to the Commissioner, as long as the

Commissioner is the insurer, holder, or reinsurer of the mortgage, that the mortgagor will not:

(a) In selecting tenants for the project covered by the mortgage, discriminate against any family by reason of the fact that there are children in the family;

(b) Rent, permit the rental or permit the offering for rental of the housing, or any part thereof, covered by such mortgage, for transient or hotel purposes. For the purposes of this certificate, the term rental for transient or hotel purposes shall mean (1) rental for any period less than 30 days, or (2) any rental, if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linens, and bellboy service;

(c) Sell the project as long as the Commissioner is the insurer, holder, or reinsurer of the mortgage, unless the purchaser also certifies.

§ 221.537 Additional occupancy requirements; preferred purchasers or tenants.

(a) In the case of projects owned by mortgagors whose mortgages bear interest at the rate set out in § 221.518(b), occupancy shall be restricted to those families determined by the Commissioner to be low or moderate income families.

(b) In the case of projects owned by all other mortgagors, it shall be established, in a manner satisfactory to the Commissioner, that preference or priority of occupancy shall be given to families as described in section 221(d) (3) and (4) of the Act.

PREVAILING WAGE REQUIREMENTS

§ 221.538 Applicability of prevailing wage requirements.

The following prevailing wage requirements shall be applicable to all mortgages executed by private, limited dividend corporation, cooperative, and investor sponsor mortgagors, and the compliance with such requirements shall be evidenced at such time and in such manner as the Commissioner may prescribe:

(a) *Labor standards.* Any contract or subcontract executed for the performance of construction of the project shall comply with all applicable Labor Standards and provisions of the Regulations of the Secretary of Labor, issued May 9, 1951, 29 CFR 5.1–5.12 (16 F.R. 4430).

(b) *Ineligible contractors.* No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established and maintained by the Comptroller General, pursuant to § 5.6 (b) of the Regulations of the Secretary of Labor, issued May 9, 1951, 29 CFR 5.6(b) (16 F.R. 4431).

(c) *Ineligible advances.* No advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed, on the ineligible list established by the Comptroller General, pursuant to the provisions of the Secretary of Labor, issued May 9, 1951, 29 CFR 5.6(b) (16 F.R. 4431).

(d) *Wage certificate.* No advance under any mortgage shall be eligible for insurance unless there is filed with the application for such advance a certificate or certificates in the form required by the Commissioner, supported by such other information as the Commissioner may prescribe, certifying that the laborers and mechanics employed in the construction of the dwelling or dwellings, or housing project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor prior to the beginning of construction and after the date of filing of the application for insurance.

§ 221.539 Discrimination prohibited.

Any contract or subcontract executed for the performance of construction of the project shall contain the provision that there shall be no discrimination against any employee, or applicant for employment, because of race, color, creed, or national origin.

INSURANCE OF ADVANCES

§ 221.540 Financial requirements.

In order for a mortgage to be eligible for insurance of advances, the following financial requirements must be met by the mortgagor to the satisfaction of the Commissioner:

(a) The mortgagor shall deposit with the mortgagee or in a depository satisfactory to the mortgagee and under control of the mortgagee an amount equivalent to not less than two percent of the original principal amount of the mortgage, for the purpose of meeting the cost of equipping and operating the project subsequent to completion of construction of the entire project or units thereof and, during the course of construction, for allocation by the mortgagee to the accruals for taxes, mortgage insurance premiums, hazard insurance premiums and assessments required by the terms of the mortgage.

(b) The mortgagor must establish in a manner satisfactory to the Commissioner that, in addition to the proceeds of the insured mortgage, the mortgagor has funds sufficient to assure completion of construction of the project and to pay all carrying charges, financing and organization expenses incidental to the construction of the project. Unless other provisions acceptable to the Commissioner are made, such funds shall be deposited with and held by the mortgagee in a special account or by an acceptable depository designated by the mortgagee under an appropriate agreement approved by the Commissioner which will require all such funds to be expended for work and material on the physical improvements and for other charges and expenses to be paid when due prior to the advance of any mortgage money.

(c) The Commissioner may require the deposit with the mortgagee or with an acceptable trustee or escrow agent designated by the mortgagee, under an appropriate agreement, of such cash as may be required for the completion of off-site public utilities and streets.

§ 221.541 Building loan agreement.

Prior to the initial endorsement of the mortgage for insurance, the mortgagor and mortgagee shall execute a building loan agreement approved by the Commissioner setting forth the terms and conditions on which progress payments may be advanced during construction.

§ 221.542 Assurance of completion.

To obtain insurance of advances, the mortgagor shall furnish assurance of completion of the project in a form and amount approved by the Commissioner, as follows:

(a) A bond of a surety company with the mortgagor and mortgagee as joint obligees in the penal sum of at least 10 percent of the estimated cost of construction of the project; or

(b) An escrow deposit under an agreement with the mortgagee, or with a depository satisfactory to the mortgagee and the Commissioner, of cash, or of securities of, or fully guaranteed as to principal and interest by, the United States of America, in an amount at least equal to 10 percent of the estimated cost of construction of the project.

ADVANCE AMORTIZATION REQUIREMENTS

§ 221.543 Advance amortization.

(a) If prior to the beginning of amortization net income, as defined by the Commissioner, is received as the result of the rental of the mortgaged property, such net income, to the extent determined by the Commissioner, shall be applied either to advance amortization or to offset the cost of project capital improvements which are approved by the Commissioner.

(b) The provisions of paragraph (a) shall not apply to cooperative or investor sponsor mortgagors.

PROPERTY REQUIREMENTS

§ 221.544 Eligibility of property.

(a) A mortgage to be eligible for insurance shall be on real estate held:

(1) In fee simple; or

(2) On the interest of the lessee under a lease for not less than ninety-nine years which is renewable; or

(3) Under a lease having a period of not less than seventy-five years to run from the date of mortgage is executed; or

(4) Under a lease executed by a governmental agency, an Indian or an Indian tribe for the maximum term consistent with the legal authority for the execution of such lease, provided that the term of any such lease shall run for a period of not less than fifty years from the date the mortgage is executed.

(b) The property constituting security for the mortgage must be held by an

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eligible mortgagor as herein defined and must at the time the mortgage is insured be free and clear of all liens other than that of such mortgage.

§ 221.545 Development of property.

(a) *Obligation of mortgagor to construct project.* At the time the mortgage is insured, the mortgagor shall be obligated to construct and complete new housing accommodations on the mortgaged property or to rehabilitate existing housing accommodations designed principally for residential use. The Commissioner may insure a mortgage on a completed project constructed pursuant to a commitment to insure upon completion .

(b) *Minimum number of units.* The project shall consist of not less than five dwelling units on one site and may be detached, semi-detached, or row houses, or a multifamily structure.

(c) *Compliance with governmental regulations.* The property, including improvements, shall comply with any material zoning or deed restrictions applicable to the project site and with all applicable building and other governmental regulations.

§ 221.546 Commercial and community facilities.

The project may include such commercial and community facilities as the Commissioner deems adequate to serve the occupants.

COST CERTIFICATION REQUIREMENTS

§ 221.547 Certification of cost requirements.

Prior to initial endorsement of the mortgage for insurance, the mortgagor, the mortgagee, and the Commissioner shall enter into an agreement in form and content satisfactory to the Commissioner for the purpose of precluding any excess of mortgage proceeds over statutory limitations. Under this agreement the mortgagor shall disclose its relationship with the builder, including any collateral agreement, and agree to enter into a construction contract the terms of which shall depend on whether or not there exists an identity of interest between the mortgagor and the builder. The agreement shall require that upon completion of all physical improvements on the mortgaged property the mortgagor must execute a certificate of actual costs. The agreement shall further require that any excess of mortgage proceeds over (1) in the case of a private or limited dividend corporation mortgagor, 90 percent; or (2) in the case of all other mortgagors, 100 percent, of actual cost shall be applied to reduction of the outstanding balance of the principal of the mortgage.

§ 221.548 Form of contract.

The form of contract between the mortgagor and the builder shall be determined in accordance with the following:

(a) *Non-identity of interest.* (1) In the case of all mortgages except those executed by cooperative mortgagors, if it is established to the satisfaction of the Commissioner that neither the mortgagor nor any of the officers, directors or stockholders of the mortgagor have any interest in the builder or contractor, there may be used a lump sum form of contract providing for payment of a specified amount.

(2) In the case of mortgages executed by cooperative mortgagors, a lump sum form of contract may be used if it is found by the Commissioner that no identity of interest exists between the mortgagor or any of its officers, directors or stockholders and the general contractor, and that a cost plus form of contract is not required in the interests of the Commissioner.

(b) *Identity of interest.* If it is determined by the Commissioner that the mortgagor, its officers, directors or stockholders, have any interest, financial or otherwise, in the builder or contractor, or, where, in the case of a cooperative mortgagor, if the Commissioner does not make the findings set out in paragraph (a)(2) the form of contract shall provide for the payment of the actual cost of construction, not to exceed an up-set price and may provide for payment of a builders' and sponsors' fixed fee in addition thereto. The builders' and sponsors' fixed feed shall be equal to 10 percent of all other items entering into the term actual cost except land or any amount paid for a leasehold and, in case the mortgage is to assist the financing of repair or rehabilitation, the land and improvements (if any) prior to such repair or rehabilitation and any amount of the mortgage proceeds used to refinance an outstanding indebtedness on the property, unless the Commissioner, after determining such allowance is unreasonable, prescribes a lesser percentage.

§ 221.549 Certificate as to subcontracts.

If it is determined by the Commissioner that the mortgagor, its officers, directors or stockholders, have any interest, financial or otherwise, in any subcontractor or material supplier, the mortgagor must certify in a form prescribed by the Commissioner prior to final endorsement that the amounts paid to such subcontractor or material supplier were not more than the rate prevailing in the locality for similar type labor and materials.

§ 221.550 Certificate of actual cost.

The mortgagor's certificate of actual cost, in a form prescribed by the Commissioner, shall be submitted upon completion of the physical improvements to the satisfaction of the Commissioner and prior to final endorsement and shall show the actual cost to the mortgagor of:

(a) The construction contract, including all cost of the construction under a lump sum contract, after deduction of any kick-backs, rebates, trade discounts, or other similar payments to the mortgagor corporation, or to any of its officers, directors or stockholders;

(b) Architect's fee;

(c) Off-site public utilities and streets not included in the general contract;

(d) Organizational and legal work;

(e) Other items of expense approved by the Commissioner; and

(f) (1) In the case of a lump sum contract an allowance for sponsors' profit and risk equal to 10 percent of all other items entering into the term actual cost except amounts paid by the mortgagor under a general construction contract, the value of land, any amount paid for a leasehold and, in the case the mortgage is to assist the financing of repair or rehabilitation, the value of the land and improvements (if any) prior to such repair or rehabilitation and any amount of the mortgage proceeds used to refinance an outstanding indebtedness on the property, unless the Commissioner, after determining such allowance is unreasonable, prescribes a lesser percentage; or (2) in the case of a fixed fee contract, (i) such allowance of general overhead items as are acceptable to the Commissioner and (ii) the allowance for builders' and sponsors' profit and risk set out in § 221.548(b).

§ 221.551 Contractor's certification—fixed fee contract.

A contractor receiving a fixed fee shall certify in a form prescribed by the Commissioner as to all actual cost paid for labor, materials, and subcontract work under the general contract exclusive of the builder's fee less any kick-backs, rebates, trade discounts, or other similar payments to the builder or mortgagor or any of its officers, directors or stockholders.

§ 221.552 Records.

The mortgagor shall keep and maintain adequate records of all cost of any construction or other cost items not representing work under the general contract and, in the case of a fixed fee contract, shall require the builder to keep similar records and, upon request by the Commissioner, shall make available for examination such records including any collateral agreements.

§ 221.553 Certificate of public accountant.

The certificate of actual cost shall be supported by a certificate as to accuracy by an independent Certified Public Accountant or independent public accountant, which shall include a statement that the accounts, records and supporting documents have been examined in accordance with generally accepted auditing standards to the extent deemed necessary to verify the actual costs.

§ 221.554 Value of land.

Upon receipt of the mortgagor's certification of actual cost there shall be added to the total amount thereof the Commissioner's estimate of the fair market value of any land included in the mortgage security and owned by the mortgagor in fee, such value being prior to the construction of the improvements. In the event the land is held under a leasehold or other interest less than a fee, the cost, if any, of acquiring the leasehold or other interest is considered an allowable expense which may be added to actual cost provided that in no event such amount is in excess of the fair market value of such leasehold or other interest exclusive of proposed improvements.

§ 221.555 Reduction in mortgage amount—new construction.

If the principal obligation of the mortgage exceeds (1) in the case of a private or limited dividend corporation mortgagor, 90 percent, or (2) in the case of other mortgagors, 100 percent, of the total amount as shown by the certificate of actual cost plus the value of land, the mortgage shall be reduced by the amount of such excess prior to final endorsement for insurance.

§ 221.556 Reduction in mortgage amount—rehabilitation.

In the event the mortgage is to finance repair or rehabilitation, the mortgagor's actual cost of such repair or rehabilitation may include the items of expense permitted for new construction in accordance with § 221.550 and the applicable cost certification procedure described therein will be required; provided such mortgage shall be subject to the following limitations:

(a) *Property held in fee.* If no part of the proceeds is to be used to finance the purchase of the land or structures involved, the mortgage shall be reduced to an amount not to exceed 100 percent of the approved cost of the completed repair or rehabilitation.

(b) *Property subject to existing mortgage.* If the insured mortgage is to include the cost of refinancing an existing mortgage acceptable to the Commissioner, the amount of the existing mortgage or (1) in the case of a private or limited dividend corporation mortgagor 90 percent, or (2) in the case of all other mortgagors, 100 percent, of the Commissioner's estimate of the fair market value of the land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds the total amount thus obtained the mortgage shall be reduced by the amount of such excess, prior to final endorsement for insurance.

(c) *Property to be acquired.* If the mortgage is to include the cost of land and improvements, and the purchase price thereof is to be financed with part of the mortgage proceeds, the purchase price, or the Commissioner's estimate of the fair market value of the land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds (1) in the case of a private or limited dividend corporation mortgagor, 90 percent, or (2) in the case of all other mortgagors, 100 percent, of the total amount thus obtained, the mortgage shall be reduced by the amount of such excess, prior to final endorsement for insurance.

§ 221.557 Requisites of agreement and certification.

Any agreement, undertaking, statement or certification required by § 221.550 shall specifically state that it has been made, presented, and delivered for the purpose of influencing an official action of the Federal Housing Administration, and of the Federal Housing Commissioner, and may be relied upon by the Commissioner as a true statement of the facts contained therein.

§ 221.558 Cost certification incontestable.

Upon the Commissioner's approval of the mortgagor's certification as required by § 221.550 such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor.

OTHER ELIGIBLE MORTGAGES

§ 221.559 Eligibility of miscellaneous type mortgages.

(a) A mortgage covering five or more rental units and which meets the requirements of this part, except as modified by this section, shall be eligible for insurance under this subpart.

(b) The mortgage may be accepted for insurance if:

(1) Executed in connection with the sale by the Government, or any agency or official thereof, of any housing acquired or constructed under Public Law 849, Seventy-sixth Congress, as amended; Public Law 781, Seventy-sixth Congress, as amended; or Public Laws 9, 73, or 353, Seventy-seventh Congress, as amended (including any additional property acquired, held, or constructed in connection with such housing or to serve the inhabitants thereof); or

(2) Executed in connection with the sale by the Public Housing Administration, or by any public housing agency with the approval of the said Administration, of any housing (including any additional property acquired, held, or constructed in connection with such housing or to serve the inhabitants thereof) owned or financially assisted pursuant to the provisions of Public Law 671, Seventy-sixth Congress; or

(3) Executed in connection with the sale by the Government, or any agency or official thereof, of any of the so-called Greenbelt towns, or parts thereof, including projects, or parts thereof, known as Greenhills, Ohio; Greenbelt, Maryland; and Greendale, Wisconsin, developed under the Emergency Relief Appropriation Act of 1935; or of any of the village properties or employees' housing under the jurisdiction of the Tennessee Valley Authority; or of any housing under the jurisdiction of the Department of the Interior located within the town area of Coulee Dam, Washington, acquired by the United States for the construction, operation, and maintenance of Grand Coulee Dam and its appurtenant works or of any permanent housing under the jurisdiction of the Department of the Interior constructed under the Boulder Canyon Project Act of December 21, 1928, as amended and supplemented, located within the Boulder City municipal area; or

(4) Executed in connection with the sale by the Government, or any agency or official thereof, of any housing (including any property acquired, held, or constructed in connection therewith or to serve the inhabitants thereof) pursuant to the Atomic Energy Community Act of 1955, as amended: *Provided,* That such insurance shall be issued without regard to any preference or priorities except those prescribed by the National Housing Act or the Atomic Energy Community Act of 1955, as amended; or

(5) Executed in connection with the sale by a State or municipality, or any agency, instrumentality, or political subdivision of either, of a project consisting of any permanent housing (including any property acquired, held or constructed in connection therewith or to serve the inhabitants thereof), constructed by or on behalf of such State, municipality, agency, instrumentality or political subdivision, for the occupancy of veterans (as defined in § 203.12), their families and others: *Provided,* That in no case may the principal obligation of a mortgage referred to in this subparagraph exceed 90 percent of the appraised value of the mortgaged property; or

(6) Executed in connection with the first resale, within two years from the date of its acquisition from the Government, of any portion of a project or property of the character described in subparagraphs (1), (2), (3), and (4) of this paragraph.

§ 221.560 Eligibility of refinanced mortgages.

(a) Notwithstanding any other provisions of this subpart, a mortgage bearing interest as provided in § 221.518, given to refinance a mortgage insured under sections 220, 221, 608 or 908 of the National Housing Act, shall be eligible for insurance under this subpart, if the principal amount of such new mortgage does not exceed the original principal amount, and the term does not exceed the unexpired term of such existing mortgage; except that in any case in which the Commissioner determines that the insurance of a mortgage for an additional term will inure to the benefit of the applicable insurance fund taking into consideration the outstanding insurance liability under the existing insured mortgage, the new mortgage may have a term of not more than 12 years in excess of unexpired term of the existing insured mortgage.

(b) Notwithstanding any other provision of this subpart, a mortgage bearing interest not in excess of the rates provided in § 221.518, given by a mortgagor other than a private mortgagor, to refinance a mortgage covering an existing property or project located in an urban renewal area, shall be eligible for insurance under this subpart, provided the Commissioner finds that such insurance will facilitate the occupancy of dwelling units in the property or project by families of low or moderate income or families displaced from an urban renewal area or displaced as a result of governmental action.

§ 221.561 Reinsurance of Commissioner-held mortgages.

Notwithstanding any other provisions of this subpart, the Commissioner may insure any mortgage assigned to him in connection with payment under a contract of mortgage insurance, or executed in connection with a sale by him of any property acquired under Title II, Title

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VI, Title VII, Title VIII, or Title IX of

or the "A.T.A. Standard Mortgagee

Subpart D—Contract Rights and Ob-

ing to the original principal of the mort-

VI, Title VII, Title VIII, or Title IX of the National Housing Act without regard to any limitations upon eligibility contained in this subpart.

TITLE

§ 221.562 Eligibility of title.

In order for the mortgaged property to be eligible for insurance, the Commissioner must determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for record. The title evidence will be examined by the Commissioner and the original endorsement of the credit instrument for insurance will be evidence of its acceptability.

§ 221.563 Title evidence.

Upon insurance of the mortgage, the mortgagee, without expense to the Commissioner, shall furnish to the Commissioner a survey satisfactory to him and a policy of title insurance, as provided in paragraph (a) of this section, or, if the mortgagee is unable to furnish such policy for reasons satisfactory to the Commissioner, the mortgagee, without expense to the Commissioner, shall furnish such evidence of title as provided in paragraphs (b), (c) or (d) of this section, as the Commissioner may require.

(a) A policy of title insurance with respect to such mortgage, issued by a company satisfactory to the Commissioner. Such policy shall comply with the "L.I.C. Standard Mortgagee Form", or the "A.T.A. Standard Mortgagee Form", or such other form as may be approved by the Commissioner; shall be payable to the mortgagee and the Commissioner as their respective interests may appear; and shall become an owner's policy, running to the mortgagee as owner upon the acquisition of the property by the mortgagee in extinguishment of a debt through foreclosure or by other means, and to the Commissioner as owner upon the acquisition of the property by him pursuant to the mortgage insurance contract.

(b) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

(c) A Torrens or similar title certificate.

(d) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or Territory thereof.

EFFECTIVE DATE

§ 221.700 Effective date.

Unless otherwise specified the provisions of this subpart shall be effective as to all mortgages with respect to which a commitment to insure is issued on or after July 7, 1961.

Subpart D—Contract Rights and Obligations—Moderate Income Projects

§ 221.751 Incorporation by reference.

(a) All of the provisions of Part 207 of this chapter, covering mortgages insured under section 207 of the National Housing Act, apply with full force and effect to multifamily project mortgages insured under section 221 of the National Housing Act, except the following provisions:

Sec.
207.252 First, second and third premium.
207.253 Adjusted premium charge.
207.259 Insurance benefits.
207.264 Effective date.

(b) For the purposes of this subpart all references in Part 207 of this chapter to section 207 of the Act shall be construed to refer to section 221 of the Act and references to Part 207 shall be construed to refer to this subpart and all references to the Housing Insurance Fund or the Housing Fund should be construed to refer to the section 221 Housing Insurance Fund.

§ 221.755 First, second and third premiums.

All of the provisions of § 207.252 of this chapter are incorporated by reference except that such provisions shall not be applicable to a mortgagee in the case of a mortgage bearing interest at the rate set out in § 221.518(b).

§ 221.760 Adjusted premium charge.

All of the provisions of § 207.253 of this chapter shall apply to mortgages bearing interest at the rate set out in § 221.518(a), except that the provisions relating to voluntary termination and the prepayment of a termination charge shall not be applicable.

§ 221.765 Payment of insurance.

(a) In the case of a mortgage executed by a mortgagor whose mortgage bears interest at the rate set out in § 221.518(b), all of the provisions of § 207.259 of this chapter shall govern the payment of insurance except that, when the mortgagee elects to and does proceed in accordance with § 207.258 (a)(1) of this chapter, the computation of the total face value of the debentures to be issued shall be determined by adding to the original principal of the mortgage which was unpaid on the date of default; any amount the mortgagee may have paid for taxes, special assessments and water rates which are liens prior to the mortgage; any amount for hazard insurance on the property; and reasonable expenses for the completion and preservation of the property; less any amount received on account of the mortgage after such date, and any net income received by the mortgagee from the property after such date.

(b) In the case of a mortgage executed by all other mortgagors, including mortgages endorsed for insurance on or after July 7, 1961, on the basis of commitments outstanding prior to July 7, 1961, all of the provisions of § 207.259 of this chapter shall govern the payment of insurance benefits on such mortgages, except that:

(1) In lieu of issuing debentures, and making a cash adjustment, as provided in § 207.259, the Commissioner shall pay to the mortgagee in cash of the Section 221 Housing Insurance Fund an amount equivalent to the total face amount of the debentures and the cash adjustment provided for in § 207.259; and

(2) In computing the amount of the certificate of claim, the amount of the cash payment to the mortgagee, as provided in subparagraph (1), shall be substituted for the face value of the debentures and the cash adjustment paid to provided for in § 207.259; and

(3) In lieu of the cash payment provided in subparagraph (1), mortgagees filing claim for insurance benefits on mortgages endorsed for insurance on or after July 7, 1961, on the basis of commitments outstanding prior to July 7, 1961, may upon filing a written request with the application for the payment of insurance benefits, receive payment in debentures of the Section 221 Housing Insurance Fund issued in accordance with the provisions of § 207.259 of this chapter.

§ 221.770 Assignment option.

The mortgagee has the option to assign, transfer and deliver to the Commissioner the original credit instrument and the insured mortgage securing the same, provided such mortgage is not in default at the expiration of 20 years from the date of final endorsement of the mortgage.

§ 221.775 Option period.

The mortgagee may exercise its option to assign within one year following the twentieth anniversary of the date the mortgage was finally endorsed for insurance.

§ 221.780 Issuance of debentures.

Upon the exercise of the assignment option and the satisfactory performance of the requirements as to assignment set out in § 207.258 of this chapter, the Commissioner shall issue to the assignor mortgagee debentures having a total face value equal to the amount of the original principal obligation of the mortgage which was unpaid on the date of the assignment, plus accrued interest to such date.

§ 221.785 Date of maturity of debentures.

The debentures issued pursuant to the exercise of an assignment option shall be dated as of the date the mortgage is assigned to the Commissioner and shall mature 10 years after such date.

§ 221.790 Debenture interest rate.

The debentures issued pursuant to the exercise of an assignment option shall bear interest at the "going Federal rate" at date of issuance. The "going Federal rate" means the annual rate of interest specified by the Secretary of the Treasury as applicable to the 6-month period which includes the issuance date of the debentures. The Secretary of the Treasury shall determine this applicable rate by estimating the average yield to maturity, on the basis of daily closing market bid quotations or prices during the month of May or the month of November, as the case may be, next preceding such 6-month period, on all outstanding marketable obligations of the United States having a maturity date of 8 to 12 years from the first day of May or November, as the case may be. If there should be no outstanding marketable obligations of the United States having the 8 to 12 year maturity at the time the Secretary of the Treasury is required to determine the debenture rate involved, the obligation next shorter than 8 years and the obligation next longer than 12 years respectively shall be used.

§ 221.950 Effective date.

Unless otherwise specified the provisions of this subpart shall be effective as to all mortgages with respect to which a commitment to insure is issued on or after July 7, 1961.

SUBCHAPTER H—MORTGAGE INSURANCE FOR SERVICEMEN

PART 222—SERVICEMEN'S MORTGAGE INSURANCE.

Subpart A—Eligibility Requirements

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222.1 Incorporation by reference.
222.2 Definition of terms.
222.3 Maximum mortgage amount; dollar limitation.
222.4 Maximum mortgage amount; ratio of loan-to-value limitation.
222.5 Mortgagor's minimum investment.
222.6 Application of payments.
222.7 Use of mortgage proceeds.
222.8 Eligible mortgagors.
222.9 Location of dwelling.
222.10 Effective date.

Subpart B—Contract Rights and Obligations

222.251 Incorporation by reference.
222.252 Definition of terms.
222.253 Annual mortgage insurance premiums and charges.
222.254 Prepayment premiums.
222.255 Pro-rata refund in event of prepayment.

AUTHORITY: §§ 222.1 to 222.255 issued under sec. 211, 52 Stat. 23, as amended, sec. 222, 68 Stat. 603, as amended; 12 U.S.C. 1715b, 1715m.

Subpart A—Eligibility Requirements

§ 222.1 Incorporation by reference.

(a) All of the provisions of Part 203 of this chapter concerning eligibility requirements of mortgages covering one- to four-family dwellings under section 203 of the National Housing Act apply with full force and effect to mortgages insured under section 222 of the National Housing Act except the following provisions:

Sec.
203.18 Maximum mortgage amounts.
203.24 Application of payments.
203.31 Owner-occupancy in military service.
203.38 Location of dwelling.
203.50 et seq. Insured home improvement loans.
203.249 Effective date.

(b) For the purposes of this subpart all references in Part 203 of this chapter to section 203 of the National Housing Act shall be deemed to refer to section 222 of the National Housing Act.

§ 222.2 Definition of terms.

As used in this subpart the terms—

(a) "Secretary" shall mean the Secretary of Defense or, in the case of the United States Coast Guard, the Secretary of the Treasury and any officer or employee designated by such Secretary to issue certificates of eligibility and certificates of termination.

(b) "Certificate of eligibility" means the official certificate issued by the Secretary to the Federal Housing Commissioner which established that the person designated on the certificate as the serviceman has met the eligibility requirements set forth in section 222 of the National Housing Act as amended.

(c) "Serviceman" means a person to whom the Secretary has issued a certificate of eligibility.

(d) "Period of ownership by serviceman" means that period of time during which a military service is required to pay mortgage insurance premiums to the Federal Housing Commissioner, commencing with the date the Federal Housing Commissioner endorses a mortgage loan for insurance and terminating when the Secretary furnishes the Commissioner with a certificate indicating that the military service will no longer be liable for payment of insurance premiums to the Commissioner.

§ 222.3 Maximum mortgage amount; dollar limitation.

The mortgage shall involve a principal obligation in an amount not in excess of $20,000, except that a mortgage meeting the requirements of § 203.18(c) shall not exceed $9,000.

§ 222.4 Maximum mortgage amount; ratio of loan-to-value limitation.

The mortgage shall be in an amount not to exceed 95 percent of the appraised value of the property as of the date the mortgage is accepted for insurance, or such higher amount as may be calculated by applying the maximum ratio of loan-to-value prescribed in § 203.18.

§ 222.5 Mortgagor's minimum investment.

At the time the mortgage is insured the mortgagor shall have paid on account of the property at least 3 percent of the Commissioner's estimate of the cost of acquisition or such larger amount as the Commissioner may determine in cash or its equivalent.

§ 222.6 Application of payments.

construction or purchase of an eligible

Subpart B—Contract Rights and

will no longer be responsible for pay-

§ 222.6 Application of payments.

(a) Notwithstanding the provisions of § 203.24 of this chapter and until such time as the mortgagee has been notified by the Commissioner that the period of ownership by serviceman has been terminated the monthly payments to be made by the mortgagor shall be applied to the following items in the order set forth:

(1) Ground rents, taxes, special assessments, and fire and other hazard insurance premiums;

(2) Service charge, if any;

(3) Interest on the mortgage; and

(4) Amortization of the principal of the mortgage.

(b) After receipt of notification from the Commissioner that the period of ownership by serviceman has been terminated the mortgagee shall apply all monthly payments received from the mortgagor in the order set forth in § 203.24 of this chapter.

§ 222.7 Use of mortgage proceeds.

The proceeds of mortgages shall be used for the purpose of financing the construction or purchase of an eligible dwelling by a serviceman.

§ 222.8 Eligible mortgagors.

A mortgagor must meet the requirements of §§ 203.32 to 203.36 of this chapter and in addition must hold a certificate of eligibility issued by the Secretary indicating that the mortgagor meets the eligibility requirements set forth in section 222 of the National Housing Act as amended.

§ 222.9 Location of dwelling.

At the time the mortgage is insured there must be located on the mortgaged property a dwelling unit designed principally for residential use for not more than one family. Such unit may be connected with other dwellings by a party wall or otherwise.

§ 222.10 Effective date.

Unless otherwise specified, the rules in this subpart are effective as to all mortgages on which a commitment to insure is issued to an approved mortgagee on or after November 5, 1954.

Subpart B—Contract Rights and Obligations

§ 222.251 Incorporation by reference.

(a) The provisions of Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act which refer to the mortgagee shall be construed to refer to the mortgagee or the service branch, as the case may be, in connection with mortgages insured under section 222 of the National Housing Act. In addition, all of the provisions of Part 203 of this chapter, covering mortgages insured under section 203 of the National Housing Act apply to mortgages insured under section 222 of the National Housing Act except the following provisions:

Sec.	
203.420	Nature of Mutual Mortgage Insurance Fund.
203.421	Allocation of Mutual Mortgage Insurance Fund income or loss.
203.422	Right and liability under Mutual Mortgage Insurance Fund.
203.423	Distribution of distributive shares.
203.424	Maximum amount of distributive shares.
203.425	Finality of determination.
203.435	Form of assignment to investing mortgagee.
203.440 et seq.	Insured home improvement loans.

(b) For the purposes of this subpart all references in Part 203 of this chapter to section 203 of the National Housing Act shall be deemed to refer to section 222 of the National Housing Act and all references to the Mutual Mortgage Insurance Fund or the Fund shall be construed to refer to the Servicemen's Mortgage Insurance Fund.

§ 222.252 Definition of terms.

The definitions set forth in §§ 203.251 and 222.2 of this chapter shall apply with full force and effect to this subpart and in addition the terms—

(a) "Service branch" means the military service of which a mortgagor, is a member at the time the mortgage is endorsed for insurance pursuant to section 222 of the National Housing Act, as amended.

(b) "Certificate of termination" means the official notice issued by the Secretary to the Federal Housing Commissioner advising the Commissioner that the period of ownership by a serviceman has been terminated and the service branch will no longer be responsible for payment of mortgage insurance premiums.

§ 222.253 Annual mortgage insurance premiums and charges.

The service branch shall during the period of ownership by a serviceman have the responsibility for payment of all mortgage insurance premiums and charges. The mortgagee shall be responsible for payment of all such premiums or charges after it has been notified by the Commissioner that the period of ownership by the serviceman has been terminated.

§ 222.254 Prepayment premiums.

(a) The service branch shall have the responsibility for payment of all adjusted premium charges which are due and payable to the Commissioner upon the prepayment of an insured mortgage during the period of ownership by the serviceman. The mortgagee shall be responsible for payment of any such adjusted premium charge upon prepayment of an insured mortgage after the mortgagee has been notified by the Commissioner that the period of ownership by the serviceman has been terminated.

(b) In the event that the principal obligation of any mortgage accepted for insurance is paid in full prior to maturity, the mortgagee shall within 30 days thereafter notify the Commissioner of the date of prepayment and shall pay to the Commissioner an adjusted premium charge of 1 percent of the original principal amount of the prepaid mortgage: *Provided,* That when such payment in full prior to maturity occurs during the period of ownership by the serviceman the adjusted premium charge shall be paid to the Commissioner by the service branch.

(c) In no event shall the adjusted premium exceed the aggregate amount of premiums which would have been payable if the mortgage had continued to be insured until maturity.

(d) No adjusted premium shall be due or payable in the following cases:

(1) Where at the time of such prepayment there is placed on the mortgaged property a new insured mortgage;

(2) Where the final maturity specified in the mortgage is accelerated solely by reason of partial prepayments made by

the mortgagor which do not exceed in any one calendar year 15 percent of the original face amount of the mortgage, plus any increased amount resulting from open-end advances made pursuant to § 203.44 of this chapter.

(3) Where the final maturity specified in the mortgage is accelerated solely by reason of payments to principal to compensate for—

(i) Damage to the mortgaged property;

(ii) The conveyance of the mortgaged property pursuant to condemnation proceedings or in lieu of condemnation proceedings; or

(iii) A release of a part of such property if approved by the Commissioner:

(4) Where payment in full is made pursuant to a court order or of a delinquent mortgage on which foreclosure proceedings have been commenced, or for the purpose of avoiding foreclosure, if the transaction is approved by the Commissioner.

§ 222.255 Pro-rata refund in the event of prepayment.

Upon such prepayment the contract of insurance shall terminate and the Commissioner will refund to the service branch or to the mortgagee, as the case may be, for the account of the mortgagor an amount equal to the pro-rata portion of the current annual mortgage insurance premium and insurance charge in the case of open-end advances theretofore paid which is applicable to the portion of the year subsequent to such payment, computed from the first day of the month following the month in which such prepayment occurs: *Provided*, That no such refund will be made in any case where the prepayment occurs in the twelfth month of the premium year.

SUBCHAPTER I—HOUSING FOR ELDERLY PERSONS

PART 231—HOUSING MORTGAGE INSURANCE FOR THE ELDERLY

Subpart A—Eligibility Requirements

Sec.
231.1 Incorporation by reference.
231.2 Definitions.
231.3 Maximum mortgage amounts—new construction.
231.4 Maximum mortgage amounts—rehabilitation projects.
231.5 Increased mortgage amounts—elevator type structures.
231.6 Increased mortgage amounts—high cost areas.
231.7 Increased mortgage amounts—operating losses.
231.8 Supervision of mortgagors.
231.9 Eligible occupants.
231.10 Commercial and special facilities.
231.11 Builder's and sponsor's profit and risk allowance.
231.12 Private mortgagors–nonprofit; prepayment privilege and prepayment charges.
231.100 Effective date.

Subpart B—Contract Rights and Obligations

231.251 Incorporation by reference.
231.350 Effective date.

AUTHORITY: §§ 231.1 to 231.350 issued under sec. 211, 52 Stat. 23, as amended, sec. 231, 73 Stat. 665; 12 U.S.C. 1715b, 1715v.

Subpart A—Eligibility Requirements

§ 231.1 Incorporation by reference.

(a) All of the provisions of Part 207 of this chapter concerning eligibility requirements of mortgages covering multifamily housing under section 207 of the National Housing Act apply to mortgages on projects for the elderly insured under section 231 of the National Housing Act except the following provisions:

Sec.
207.4 Maximum mortgage amounts.
207.11 Soundness of project.
207.17 Classification.
207.19 Required supervision of private Mortgagors.
207.20 Occupancy requirements.
207.24 Development of property.
207.26 Form of contract.
207.33 Eligibility of mortgages on trailer courts or parks for trailer coach mobile dwellings.
207.34 Reinsurance of Commissioner-held mortgages.
207.37 Effective date.

(b) For the purposes of this subpart all references in Part 207 of this chapter to section 207 of the Act shall be construed to refer to section 231 of the Act.

§ 231.2 Definitions.

As used in this subpart, the following terms will have the meaning indicated:

(a) "Commissioner" means the Federal Housing Commissioner or his authorized representatives.

(b) "Act" means the National Housing Act, as amended.

(c) "Elderly person" means any person married or single, 62 years of age or more.

(d) "Housing for the elderly" means eight or more new or rehabilitated living units which are specially designed for the use and occupancy of elderly persons.

(e) "Mortgagee" means the original lender under a mortgage, and its successors and assigns, and includes the holders of credit instruments issued under a trust indenture, mortgage or deed of trust pursuant to which such holders act by and through a trustee therein named.

(f) "Mortgagor" means the original borrower under a mortgage and its successors and assigns.

(g) "Maturity date" means the date on which the mortgage indebtedness would be extinguished if paid in accordance with the periodic payments provided for in the mortgage.

(h) "Replacement cost" means the Commissioner's estimate of the construction cost of the property or project when the proposed improvements are completed. The replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction and other miscellaneous charges incident to construction and approved by the Commissioner.

(i) "Private Mortgagor—Profit" means a private corporation, association or other acceptable private organization which may in the Commissioner's discretion be regulated or restricted as to rents or sales, charges, capital structure, rate of return and methods of operation.

(j) "Private Mortgagor—Nonprofit" means a corporation or association organized for purposes other than the making of profit or gain for itself or persons identified therewith and which the Commissioner finds is in no manner

controlled by nor under the direction of persons or firms seeking to derive profit or gain therefrom. Such a mortgagor shall be regulated or supervised under federal or state laws or by political subdivisions of states or agencies thereof, or the Federal Housing Commissioner, as to rents, charges, and methods of operation. The regulation or supervision of the mortgagor shall be in such manner as, in the opinion of the Commissioner, will effectuate the purposes of this subpart.

(k) "Public Mortgagor" means a Federal or State instrumentality, a municipal corporate instrumentality of one or more States, or nonprofit development or housing corporation restricted by Federal or State laws or regulations of State banking or insurance departments as to rents, charges, capital structure, rate of return, or methods of operation.

§ 231.3 Maximum mortgage amounts—new construction.

The mortgage shall involve a principal obligation not in excess of the following:

(a) *Dollar amount limitation.* (1) $12,500,000 if executed by a Private Mortgagor;

(2) $50,000,000 if executed by a Public Mortgagor.

(b) *Dwelling unit limitation.* $2,250 per room or $9,000 per dwelling unit, if the number of rooms in the property or project is less than four per unit, for such part of the property or project as may be attributable to dwelling use exclusive of the cost of exterior land improvements as determined by the Commissioner.

(c) *Replacement cost limitation.* (1) The Commissioner's estimate of the replacement cost of the property or project when the proposed improvements are completed if executed by a Private Mortgagor—Nonprofit or a Public Mortgagor. The replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction and other miscellaneous charges incident to construction and approved by the Commissioner.

(2) 90 percent of the Commissioner's estimate of the replacement cost of the property or project when the proposed improvements are completed if executed by a Private Mortgagor—Profit. The replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction and other miscellaneous charges incident to construction and approved by the Commissioner and shall include an allowance for builders and sponsors profit and risk of 10 percent of the foregoing items exclusive of land unless the Commissioner, after certifying such allowance is unreasonable, prescribes a lesser percentage.

(d) *Reduced mortgage amount—leaseholds.* The maximum mortgage amount based upon the limitations of this section is subject to reduction by an amount equal to the capitalized value of the ground rent in the event the mortgage is on a leasehold estate rather than on a fee simple holding.

§ 231.4 Maximum mortgage amounts—rehabilitation projects.

(a) *Principal obligation of mortgage.* In the case of properties other than new construction, the principal obligation of the mortgage shall not exceed:

(1) *Public Mortgagor and Private Mortgagor—Nonprofit.* For a Public Mortgagor and a Private Mortgagor—Nonprofit, the Commissioner's estimate of the value of the project after the completion of the rehabilitation;

(2) *Private Mortgagor—Profit.* For a Private Mortgagor—Profit, 90 percent of the Commissioner's estimate of the value of the project after the completion of the rehabilitation.

(b) *Adjusted mortgage amount—rehabilitation projects.* A mortgage having a principal amount computed in compliance with the applicable provisions of this section, and which involves a project to be repaired or rehabilitated, shall be subject to the following additional limitations:

(1) *Property held in fee.* If the mortgagor is the fee simple owner of the project, the maximum mortgage amount shall not exceed 100 percent of the Commissioner's estimate of the cost of the proposed repairs or rehabilitation.

(2) *Property subject to existing mortgage.* If the mortgagor owns the project subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the maximum mortgage amount shall not exceed:

(i) *Nonprofit mortgagor.* If the mortgagor is a nonprofit mortgagor, the Commissioner's estimate of the cost of the repair or rehabilitation plus such portion of the outstanding indebtedness as does not exceed the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation; or

(ii) *Profit mortgagor.* If the mortgagor is a profit mortgagor, the Commissioner's estimate of the cost of repair or rehabilitation plus such portion of the outstanding indebtedness as does not exceed 90% of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation.

(3) *Property to be acquired.* If the project is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the maximum mortgage amount shall not exceed:

(i) *Nonprofit mortgagor.* If the mortgagor is a nonprofit mortgagor, the Commissioner's estimate of the cost of the proposed repair or rehabilitation plus the actual purchase price of the land and improvements, but not in excess of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation; or

(ii) *Profit mortgagor.* If the mortgagor is a profit mortgagor:

(*a*) 90% of the Commissioner's estimate of the cost of the repair or rehabilitation, plus

(*b*) 90% of the actual purchase price of the land and improvements, or Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation, whichever is the lesser as provided in this (*b*).

(c) *Reduced mortgage amount—leaseholds.* The maximum mortgage amount based upon the limitations of this section is subject to reduction by an amount equal to the capitalized value of the ground rent in the event the mortgage is on a leasehold estate rather than on a fee simple holding.

§ 231.5 Increased mortgage amounts—elevator type structures.

In order to compensate for the higher cost incident to elevator type structures of sound standards of construction and design, the Commissioner may increase the dwelling unit limitations of $2,250 per room to not to exceed $2,750 per room and the dollar amount limitations of $9,000 per family unit to not to exceed $9,400 per family unit.

§ 231.6 Increased mortgage amounts—high cost areas.

(a) In any geographical area where the Commissioner finds cost levels so require, he may increase the dwelling unit limitations by an amount not to exceed $1,250 per room, without regard to the number of rooms being less than four, or four or more.

(b) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

§ 231.7 Increased mortgage amounts—operating losses.

When the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project, excluding depreciation, covered by such mortgage during the first 2 years following final endorsement exceed the project income, the Commissioner may, in his discretion and upon such terms and conditions as he may prescribe, permit the excess of the foregoing expenses over the project income to be added to the amount of such mortgage, and extend the coverage of the mortgage insurance thereto, and such additional advance shall be deemed to be part of the original face amount of the mortgage.

§ 231.8 Supervision of mortgagors.

(a) *Private Mortgagor—Profit.* All of the provisions of § 207.19 of this chapter apply to mortgages executed by a Private Mortgagor—Profit.

(b) *Private Mortgagor—Nonprofit.* All of the provisions of § 207.19 of this chapter apply to mortgages executed

all references in Part 207 of this chapter the Commissioner finds is in no manner

by a Private Mortgagor—Nonprofit except that:

(1) A Private Mortgagor—Nonprofit shall not be subject to the provisions of § 207.19(b) of this chapter (Rate of return); § 207.19(e) of this chapter (Rents and charges); and § 207.19(g) of this chapter (Mortgagor's equity investment);

(2) In connection with a Private Mortgagor—Nonprofit the provisions of § 207.19(d) of this chapter (Labor standards and prevailing wage requirements), may be waived in those cases where laborers or mechanics not otherwise employed at any time on the project voluntarily donate their services without full compensation for the purpose of lowering construction costs and the Commissioner determines that amounts thus saved are fully credited to the Private Mortgagor—Nonprofit. No charge shall be made by a Private Mortgagor—Nonprofit for accommodations, facilities or services offered by the project except those charges approved by the Commissioner.

§ 231.9 Eligible occupants.

The mortgagor shall establish that preference or priority of opportunity to rent the dwelling units covered by the mortgage will be given to elderly persons.

§ 231.10 Commercial and special facilities.

The project may include such commercial and special facilities as the Commissioner deems adequate to serve the occupants of the project.

§ 231.11 Builder's and sponsor's profit and risk allowance.

(a) *Identity of interest cases.* In the case of a mortgage where it is determined by the Commissioner that an identity of interest exists between the mortgagor and the builder or contractor, there shall be included in the actual cost, in lieu of any allowance for a "builder's fixed fee" provided for in § 207.26(b) of this chapter, an allowance for builder's and sponsor's profit and risk equal to 10 percent of all other items entering into the term "actual cost" except land or any amount paid for a leasehold and, in case the mortgage is to assist the financing of repaid or rehabilitation, the land and improvements (if any) prior to such repair or rehabilitation and any amount of the mortgage proceeds used to refinance an outstanding indebtedness on the property.

(b) *Non-identity of interest cases.* In the case of a mortgage where is is established to the satisfaction of the Commissioner that no identity of interest exists between the mortgagor and the builder or contractor, there shall be included in the actual cost, in addition to the items provided for in § 207.27(a) of this chapter, an allowance for sponsor's profit and risk equal to 10 percent of all other items entering into the term "actual cost" except amounts paid by the mortgagor under a general construction contract and other items required to be deducted under the provisions of paragraph (a) of this section.

§ 213.12 Private mortgagor-nonprofit; prepayment privilege and prepayment charges.

(a) *Prepayment in full.* The mortgage indebtedness shall not be paid in full prior to maturity except that with the prior approval of the Commissioner, a mortgage may be paid in full prior to maturity:

(1) Where payment in full is made on a delinquent mortgage on which foreclosure proceedings have been commenced, or for the purpose of avoiding foreclosure; or

(2) Where the Commissioner has determined the project no longer serves the need of providing housing for families eligible for the benefits of insurance under this subpart.

(b) *Partial prepayments.* With the prior written approval of the Commissioner, partial prepayments may be made for the purpose of reducing succeeding monthly payments of the remaining balance as recast over the remaining portion of the original mortgage term.

(c) *Optional provision.* The mortgage may, if required by the mortgagee, contain a provision that, prior to maturity, and with the approval of the Commissioner, partial prepayments may be made, after thirty days' written notice to the mortgagee, on any principal payment date. If prepayments are made in any calendar year in excess of 15 percent of the original face amount of the note, a reasonable charge on such excess may be allowed as agreed upon between the mortgagor and the mortgagee.

§ 231.100 Effective date.

Unless otherwise specified, the provisions of this subpart are effective as to all mortgages on which a commitment to insure is issued on or after September 23, 1959.

Subpart B—Contract Rights and Obligations

§ 231.251 Incorporation by reference.

(a) All of the provisions of Part 207 of this chapter covering mortgages insured under section 207 of the National Housing Act apply to mortgages insured under section 231 of the National Housing Act except the following provision:

Sec.
207.264 Effective date.

(b) For the purposes of this subpart all references in Part 207 of this chapter to section 207 of the Act shall be construed to refer to section 231 of the Act.

§ 231.350 Effective date.

Unless otherwise specified, the provisions of this subpart are effective as to all mortgages on which a commitment to insure is issued on or after September 23, 1959.

SUBCHAPTER J—MORTGAGE INSURANCE FOR NURSING HOMES

PART 232—NURSING HOMES MORTGAGE INSURANCE

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AUTHORITY: §§ 232.1 to 232.350 issued under sec. 211, 52 Stat. 23, as amended, sec. 232, 73 Stat. 663; 12 U.S.C. 1715b, 1715w.

Subpart A—Eligibility Requirements

DEFINITIONS

§ 232.1 Definitions.

As used in this subpart, the following terms shall have the meaning indicated.

(a) "Commissioner" means the Federal Housing Commissioner or his authorized representatives.

(b) "Act" means the National Housing Act, as amended.

(c) "Mortgagee" means the original lender under a mortgage, and its successors and assigns, and includes the holders of credit instruments issued under a trust indenture, mortgage or deed of trust pursuant to which such holders act by and through a trustee therein named. The mortgagee shall meet the eligibility qualifications and requirements of §§ 203.1 to 203.4 and 203.6 to 203.9 of this chapter.

(d) "Mortgagor" means the original borrower under a mortgage and its successors and assigns.

(e) "Mortgage" means such a first lien upon real estate and other property as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the State, district or territory in which the real estate is located, together with the credit instrument or instruments, if any, secured thereby.

(f) "Insured mortgage" means a mortgage insured by the endorsement of the credit instrument by the Commissioner.

(g) "Maturity date" means the date on which the mortgage indebtedness would be extinguished if paid in accordance with periodic payments provided for in the mortgage.

(h) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, and the Virgin Islands.

(i) "Nursing home" means a proprietary facility, licensed or regulated by the State (or, if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located), for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care but who require skilled nursing care and related medical services, in which such nursing care and medical services are prescribed by, or are performed under the general direction of, persons licensed to provide such care or services in accordance with the laws of the State where the facility is located.

(j) "Project" means a nursing home which has been approved by the Commissioner under the provisions of this subpart.

APPLICATION AND CERTIFICATION

§ 232.5 Application.

An application for insurance of a mortgage on a project shall be submitted by a mortgagee and by the sponsors of such project through the local FHA office on an approved FHA application form. No application shall be considered unless accompanied by the exhibits called for by the form.

§ 232.6 Required certificates.

(a) *Certification by State agency.* Every application for insurance shall be accompanied by a certificate executed by a State agency for the State in which the project is or will be located, designated in accordance with section 612(a)(1) of the Public Health Service Act. Such certificate shall evidence that:

(1) There is a need for the nursing home;

(2) There are in force in the State or other political subdivision of the State in which the proposed project will be located reasonable minimum standards of licensure and methods of operation for nursing homes.

(b) *Enforcement of State standards.* No mortgage shall be insured under this subpart unless the Commissioner has been furnished with acceptable assurance from the appropriate State agency that the prescribed standards of licensure and operation will be applied and enforced with respect to any project for which mortgage insurance is provided.

FEES AND CHARGES

§ 232.10 Application fee.

An application fee of $1.50 per thousand dollars of the amount of the loan applied for shall accompany the application.

§ 232.11 Commitment fee.

A commitment fee which, when added to the application fee, will aggregate $3.00 per thousand dollars of the face amount of the loan set forth in the commitment shall be paid within 30 days after the date of the commitment or within such additional period as the Commissioner may allow.

§ 232.12 Inspection fee.

The commitment may provide for the payment of an inspection fee in an amount not to exceed $5.00 per thousand dollars of the amount of the loan set forth in the commitment.

§ 232.13 Fees on increased mortgage.

Upon application for an increase in the amount of an existing commitment, an additional application fee of $1.50 per thousand dollars shall be paid based upon the amount of such increase. Such increase shall be subject to the payment of an additional commitment fee which, when added to the additional application

fee, will aggregate $3.00 per thousand dollars of the amount of the increase. If the amount of the insured mortgage is increased after insurance and prior to final endorsement either by amendment or by the substitution of a new insured mortgage, the fees herein provided for, including the inspection fee, shall be based upon the amount of the increase.

§ 232.14 Refund of fees.

If an application is rejected before it is assigned for processing by the Commissioner, or in such other instances as the Commissioner may determine, the entire fee or any portion thereof may be waived, if not paid, or, if paid, may be returned to the applicant.

§ 232.15 Charges by mortgagee.

The mortgagee may collect from the mortgagor the amount of the fees provided for in this part and may charge the mortgagor an initial service charge to reimburse itself for the cost of closing the transaction, in an amount not to exceed 1½ percent of the original principal amount of the mortgage. Any additional charges shall be subject to prior approval of the Commissioner.

ELIGIBLE MORTGAGORS

§ 232.20 Eligible mortgagors.

All mortagors shall be approved by the Commissioner and shall possess the legal powers necessary and incidental to operating a nursing home, unless a mortgagor leases the property or project to a qualified operator, in which case the lessee shall be approved by the Commissioner and shall possess the legal powers necessary and incidental to operating a nursing home.

ELIGIBLE MORTGAGES

§ 232.25 Mortgage forms.

(a) *Approval of forms.* The mortgage shall be executed upon a form approved by the Commissioner for use in the jurisdiction where the project is located.

(b) *Changes in form.* No changes in the approved form shall be made without the prior written approval of the Commissioner.

§ 232.26 Mortgage lien.

A mortgagor shall certify at final endorsement of the loan for insurance that:

(a) The mortgage is a first lien upon and covers the entire project, except that, with the consent of the Commissioner, the mortgage may be subject to liens on equipment given to secure financing of the purchase thereof.

(b) The property covered by the mortgage is free and clear of all liens other than the insured mortgage and such other liens as may be approved by the Commissioner; and

(c) There will not be outstanding any other unpaid obligation contracted in connection with the mortgage transaction, the purchase of the mortgaged property, or the construction of the project, except obligations approved by the Commissioner.

§ 232.27 Maximum mortgage maturity.

The mortgage shall have a maturity not to exceed 20 years from the beginning of amortization and shall contain amortization or sinking-fund provisions satisfactory to the Commissioner.

§ 232.28 Payment requirements.

(a) *Method of payment.* The mortgage shall provide for payments on the first day of each month on account of interest and principal in accordance with an amortization plan as agreed upon by the mortgagor, the mortgagee and the Commissioner.

(b) *Date of first payment to principal.* The Commissioner shall estimate the time necessary to complete the project and shall establish the date of the first payment to principal so that the lapse of time between completion of the project and commencement of amortization will not be longer than necessary to obtain sustaining occupancy.

§ 232.29 Maximum interest rate.

(a) The mortgage may bear interest at such rates as may be agreed upon by the mortgagee or mortgagor but in no case shall such interest rate exceed:

(1) 5¾ percent with respect to mortgages endorsed for insurance pursuant to applications received by the Commissioner before February 2, 1961, or

(2) 5½ percent with respect to mortgages endorsed for insurance pursuant to applications received by the Commissioner on or after February 2, 1961, or

(3) 5¼ percent with respect to mortgages endorsed for insurance pursuant to applications received by the Commissioner on or after May 29, 1961.

(b) Interest shall be payable in monthly installments on the principal then outstanding.

§ 232.30 Maximum mortgage amounts.

The mortgage shall involve a principal obligation not in excess of the lesser of the following:

(a) *Dollar amount limitation.* $12,500,000; or

(b) *Loan-to-value limitation.* 90 percent of the Commissioner's estimate of the value of the property or project when the proposed improvements are completed.

§ 232.31 Increased mortgage amounts.

(a) *High cost areas.* If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct a project without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this part, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

(b) *Operating losses.* When the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project, excluding depreciation, covered by such mortgage during the first two years following final endorsement exceed the project income, the Commissioner may, in his discretion and upon such terms and conditions as he may prescribe, permit the excess of the foregoing expenses over the project income to be added to the amount of such mortgage, and extend the coverage of the mortgage insurance thereto, and such additional advance shall be deemed to be part of the original face amount of the mortgage.

§ 232.32 Adjusted mortgage amount—rehabilitation projects.

In addition to the limitations of § 237.30, a mortgage having a principal amount computed in compliance with the applicable provisions of this subpart, and which involves a project to be repaired or rehabilitated, shall be subject to the following additional limitations:

(a) *Property held in fee.* If the mortgagor is the fee simple owner of the project, the maximum mortgage amount shall not exceed 100 percent of the Commissioner's estimate of the cost of the proposed repairs or rehabilitation; or

(b) *Property subject to existing mortgage.* If the mortgagor owns the project subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the maximum mortgage amount shall not exceed: (1) The Commissioner's estimate of the cost of the repair or rehabilitation; plus (2) such portion of the outstanding indebtedness as does not exceed 90 percent of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation; or

(c) *Property to be acquired.* If the project is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the maximum mortgage amount shall not exceed 90 percent of: (1) The Commissioner's estimate of the cost of the repair or rehabilitation, and (2) the actual purchase price of the land and improvements, but not in excess of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation.

§ 232.33 Reduced mortgage amount—leaseholds.

The maximum mortgage amount based upon the limitations of this part is subject to reduction by an amount equal to the capitalized value of the ground rent in the event the mortgage is on a leasehold estate rather than on a fee simple holding.

§ 232.34 Mortgage covenant regarding racial restrictions.

The mortgage shall contain a covenant by the mortgagor that until the mortgage has been paid in full, or the contract of insurance otherwise terminated, the mortgagor will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the mortgaged property on the basis of race, color, or creed. The covenant shall be binding upon the mortgagor and its assigns and shall provide that upon violation thereof, the mortgagee may, at its option, declare the unpaid balance of the mortgage immediately due and payable.

§ 232.35 Accumulation of next premium.

(a) The mortgage shall provide for payments by the mortgagor to the mortgagee on each interest payment date of an amount sufficient to accumulate in the hands of the mortgagee one payment period prior to its due date, the next annual mortgage insurance premium payable by the mortgagee to the Commissioner. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize the ground rents, if any, and the estimated amount of all taxes, water rates and special assessments, if any, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become delinquent. The mortgage shall further provide that such payments shall be held by the mortgagee, for the purpose of paying such ground rents, taxes, water rates and assessments, and insurance premiums, before the same become delinquent. The mortgage must also make provision for adjustments, in case the estimated amount of such taxes, water rates and assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor.

§ 232.36 Application of payments.

(a) The mortgage shall provide that all monthly payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate amount thereof shall be paid by the mortgagor upon each monthly payment date in a single payment. The mortgagee shall apply the same to the following items in the order set forth:

(1) Premium charges under the contract of insurance;

(2) Ground rents, taxes, special assessments and fire and other hazard insurance premiums;

(3) Interest on the mortgage;

(4) Amortization of the principal of the mortgage.

(b) Any deficiency in the amount of any such aggregate monthly payment shall constitute an event of default. The mortgage shall further provide for a grace period of 30 days, within which time the default must be made good.

§ 232.37 Prepayment privilege and prepayment charges.

(a) *Prepayment privilege.* The mortgage shall contain a provision permitting the mortgage to be prepaid in whole or in part upon any interest payment date after giving to the mortgagee 30 days advance written notice.

(b) *Prepayment charge.* The mortgage may contain a provision for a charge in the event of prepayment of principal as may be agreed upon between the mortgagor and mortgagee. The mortgagor shall be permitted to prepay up to 15 percent of the orignial principal amount of the mortgage in any one calendar year without any additional charge.

(c) *Prepayment under cost certification.* Any reduction in the original principal amount of the mortgage resulting from the certification of cost requirements of this part shall not be construed as a prepayment of the mortgage permitting the imposition of any penalty or charge.

§ 232.38 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed 2 cents for each dollar of each payment to interest or principal more than 15 days in arrears, to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

§ 232.39 Construction standards—minimum number of beds.

The project shall conform to standards satisfactory to the Commissioner and consist of not less than 20 beds after completion of the construction or rehabilitation.

§ 232.40 Zoning, deed or building restrictions.

The project when constructed or rehabilitated shall not violate any material zoning or deed restrictions applicable to the project site, and shall comply with all applicable building and other governmental regulations.

§ 232.41 Eligibility of miscellaneous type mortgages.

A mortgage meeting the requirements of § 207.31 of this chapter, as well as the requirements of this subpart, shall be eligible for insurance under this subpart.

§ 232.42 Eligibility of refinanced mortgages.

A mortgage meeting the requirements of § 207.32 of this chapter, as well as the requirements of this subpart, shall be eligible for insurance under this subpart.

SUPERVISION OF MORTGAGORS

§ 232.45 Supervision by Commissioner.

The Commissioner may regulate and restrict the mortgagor as long as the Commissioner is the insurer, holder or re-insurer of the mortgage. Such regulation or restriction may be in the form of a regulatory agreement, corporate charter or such other means as the Commissioner approves.

COMMITMENT

§ 232.50 Commitment to insure.

(a) *Conditions of commitment.* Upon approval of an application for insurance, a commitment shall be issued by the Commissioner setting forth the terms and conditions upon which the mortgage will be insured.

(b) *Insurance of advances or upon completion.* The commitment may provide for the insurance of advances of mortgage money made during construction or may provide for insurance of the mortgage after completion of the improvements.

(c) *Renewal of commitment.* A commitment may be renewed or extended in such manner as the Commissioner may specify.

INSURANCE OF ADVANCES

§ 232.55 Building loan agreement.

Prior to the initial endorsement of the mortgage for insurance, the mortgagor and mortgagee shall execute a building loan agreement approved by the Commissioner setting forth the terms and conditions on which progress payments may be advanced during construction.

§ 232.56 Assurance of completion.

Assurance of completion satisfactory to the Commissioner shall be furnished in an amount of at least 10 percent of the cost of construction of the project as estimated by the Commissioner and shall be in one of the following forms:

(a) A bond of a surety company satisfactory to the Commissioner on the standard form prescribed by the Commissioner with the mortgagor and mortgagee as joint obligees.

(b) An escrow deposit with the mortgagee or with a depository satisfactory to the mortgagee and the Commissioner of cash or securities of, or fully guaranteed as to principal and interest by the United States of America, under a completion assurance agreement prescribed by the Commissioner.

SPECIAL REQUIREMENTS

§ 232.60 Escrow for off-site utilities and streets.

The Commissioner may require the deposit with the mortgagee or with an acceptable trustee or escrow agent designated by the mortgagee, under an appropriate agreement, of such cash as may be required for the completion of off-site public utilities and streets.

§ 232.61 Equity requirements.

(a) *Funds and finances—in general.* The mortgagor shall establish to the Commissioner's satisfaction that, in addition to the proceeds of the insured mortgage, the mortgagor has adequate funds or acceptable financing arrangements to:

(1) Meet the cost of equipping and operating the project subsequent to its completion;

(2) Meet the expenses of the project for such period as the Commissioner estimates necessary to establish a profitable operation.

(b) *Funds and finances—insured advances.* If the commitment provides for insurance of advances during construction, in addition to meeting the requirements of paragraph (a) of this section, the mortgagor shall establish that it has adequate funds or acceptable financing arrangements to:

(1) Meet the cost of completion of construction of the project including all carrying charges, financing and organization expenses incidental to the construction of the project;

(2) Meet the cost of accruals for taxes, mortgage insurance premiums, hazard insurance premiums and assessments required by the terms of the mortgage during the course of construction.

(c) *Deposit and use of funds.* Equity funds shall be deposited with and held

by the mortgagee in a special account or by an acceptable depository designated by the mortgagee under an agreement approved by the Commissioner.

§ 232.62 Advance amortization requirements.

If prior to the beginning of amortization income determined by the Commissioner to be net income is received as a result of operation of the project, such income shall be applied either to advance amortization or to offset the cost of project capital improvements which are approved by the Commissioner in such proportion as the Commissioner may prescribe.

PREVAILING WAGE REQUIREMENTS

§ 232.70 Labor standards.

Any contract or subcontract executed for the performance of construction of the project shall comply with all applicable Regulations of the Secretary of Labor (29 CFR 5.1–5.12).

§ 232.71 Ineligible contractors.

No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established by the Commissioner or by the Comptroller General pursuant to the Regulations of the Secretary of Labor (29 CFR 5.6(b)).

§ 232.72 Ineligible advances.

Unless approved by the Commissioner, no advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed on the ineligible list, established by the Commissioner or by the Comptroller General pursuant to the provisions of the Regulations of the Secretary of Labor (29 CFR 5.6(b)).

§ 232.73 Wage certificate.

No advance under the mortgage shall be eligible for insurance unless there is filed with the application for such advance a certificate as required by the Commissioner, certifying that the laborers and mechanics employed in the construction of the project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor prior to the beginning of construction and after the date of filing of the application for insurance.

§ 232.74 Discrimination prohibited.

Any contract or subcontract executed for the performance of construction of the project shall provide that there shall be no discrimination against any employee or applicant for employment because of race, color, creed or national origin.

COST CERTIFICATION REQUIREMENTS

§ 232.80 Certification of cost requirements.

Prior to initial endorsement of the mortgage for insurance, the mortgagor, the mortgagee and the Commissioner shall enter into an agreement approved by the Commissioner for the purpose of precluding any excess of mortgage proceeds over 90 percent of the actual cost of the project. Under this agreement the mortgagor shall agree to:

(a) Disclose its relationship with the builder, including any collateral agreement, and with subcontractors and suppliers;

(b) Enter into a construction contract the terms of which shall depend on whether or not there exists an identity of interest between the mortgagor and the builder;

(c) Execute a certificate of actual costs upon completion of the improvements; and

(d) Apply any excess of mortgage proceeds over 90 percent of the actual cost to reduction of the outstanding balance of the principal of the mortgage.

§ 232.81 Form of contract.

The form of contract between the mortgagor and builder shall be in accordance with the following:

(a) *Lump sum contract.* If the Commissioner determines that neither the mortgagor nor any of the officers, directors or stockholders of the mortgagor have any interest in the builder or contractor, there may be used a lump sum form of contract providing for payment of a specified amount.

(b) *Fixed fee contract.* If the Commissioner determines that the mortgagor, its officers, directors or stockholders have any interest, financial or otherwise, in the builder or contractor, the form of contract shall provide for payment of the actual cost of construction, not to exceed an upset price and may provide for payment of a builder's fixed fee shall not exceed a reasonable allowance as established by the Commissioner, in accordance with customary practices in the area.

§ 232.82 Certificate as to subcontracts.

If the Commissioner determines that the mortgagor, its officers, directors or stockholders have any interest, financial or otherwise, in any subcontractor or material supplier, the mortgagor shall certify in form prescribed by the Commissioner prior to final endorsement of the mortgage for insurance that the amounts paid to such subcontractor or material supplier were not more than the rate prevailing in the locality for similar type labor and materials.

§ 232.83 Certificate of actual cost.

The mortgagor's certificate of actual cost, in form prescribed by the Commissioner, shall be submitted upon completion of physical improvements to the satisfaction of the Commissioner and prior to final endorsement and shall show the actual cost to the mortgagor of:

(a) The construction contract, including all costs of construction under a lump sum contract, after deduction of any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor corporation, or to any of its officers, directors or stockholders;

(b) Architect's fees;

(c) Off-site public utilities and streets not included in the general contract;

(d) Organizational and legal work; and

(e) Other items of expense approved by the Commissioner.

§ 232.84 Fixed fee contract—additional certification.

When the work has been completed under a fixed fee contract, the mortgagor's certification shall also show:

(a) Such allocations of general overhead items as are acceptable to the Commissioner;

(b) A reasonable allowance for the builder's profit as established by the Commissioner.

§ 232.85 Contractor's certification—fixed fee contract.

A contractor receiving a fixed fee shall certify in form prescribed by the Commissioner as to all actual costs paid for labor, materials, and subcontract work under the general contract exclusive of the builder's fee and less any kickbacks, rebates, trade discounts, or other similar payments to the builder or mortgagor corporation or any of its officers, directors or stockholders.

§ 232.86 Records.

The mortgagor shall keep and maintain adequate records of all costs of any construction or other cost items not representing work under the general contract and shall require the builder to keep similar records and, upon request by the Commissioner, shall make available for examination such records including any collateral agreements.

§ 232.87 Certificate of public accountant.

The certificates of actual cost shall be supported by a certificate as to accuracy by an independent Certified Public Accountant or independent public accountant, which shall include a statement that the accounts, records and supporting documents have been examined in accordance with generally accepted auditing standards to the extent deemed necessary to verify the actual costs.

§ 232.88 Value of land.

Upon receipt of the mortgagor's certification of actual cost, there shall be added to the total amount thereof the Commissioner's estimate of the fair market value of any land included in the mortgage security and owned by the mortgagor in fee such value being prior to the construction of the improvements. In the event the land is held under a leasehold or other interest less than a fee, the cost, of acquiring the leasehold or other interest shall be considered an allowable expense which may be added to actual cost. *In no event shall such cost be in excess of the fair market value of such leasehold or other interest exclusive of proposed improvements.*

vance a certificate as required by the

have any interest in the builder or con-

gagor's certification shall also show:

of such leasehold or other interest exclusive of proposed improvements.

§ 232.89 Reduction in mortgage amount.

If the principal obligation of the mortgage exceeds 90 percent of the total amount as shown by the certificate of actual cost plus the value of the land (the cost shown by the certificate of actual cost in rehabilitation cases), the mortgage shall be reduced by the amount of such excess prior to final endorsement for insurance.

§ 232.90 Rehabilitation projects.

In the event the mortgage is to finance repair or rehabilitation, the mortgagor's actual cost of such repair or rehabilitation may include the items of expense permitted by new construction in accordance with this part and the applicable cost certification procedure described therein will be required; provided such mortgage shall be subject to the following limitations:

(a) *Property held in fee.* If no part of the proceeds is to be used to finance the purchase of the land or structures involved, the mortgage shall be reduced to an amount not to exceed 100 percent of the approved cost of the completed repair or rehabilitation.

(b) *Property subject to existing mortgage.* If the insured mortgage is to include the cost of refinancing an existing mortgage acceptable to the Commissioner, the amount of the existing mortgage or 90 percent of the Commissioner's estimate of the fair market value of the land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds the total amount thus obtained, the mortgage shall be reduced by the amount of such excess, prior to final endorsement for insurance.

(c) *Property to be acquired.* If the mortgage is to include the cost of land and improvements, and the purchase price thereof is to be financed with part of the mortgage proceeds, the purchase price or the Commissioner's estimate of the fair market value of land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds the applicable 90 percent of the total amount thus obtained, the mortgage shall be reduced by the amount of such excess prior to final endorsement for insurance.

§ 232.91 Effects of agreement.

Any agreement, undertaking, statement or certification required in connection with cost certification shall specifically state that it has been made, presented, and delivered for the purpose of influencing an official action of the Commissioner and may be relied upon as a true statement of the facts contained therein.

§ 232.92 Cost certification incontestable.

Upon the Commissioner's approval of the mortgagor's certification, such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor.

TITLE

§ 232.93 Eligibility of title.

In order for the mortgaged property to be eligible for insurance, the Commissioner shall determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for record. The title evidence shall be examined by the Commissioner and the original endorsement of the credit instrument for insurance shall be evidence of its acceptability.

§ 232.94 Title evidence.

Upon insurance of the mortgage, the mortgagee, without expense to the Commissioner, shall furnish to the Commissioner a survey satisfactory to him and a policy of title insurance, as provided in paragraph (a) of this section or, if the mortgagee is unable to furnish such policy for reasons satisfactory to the Commissioner, the mortgagee, without expense to the Commissioner, shall furnish such evidence of title as provided in paragraphs (b), (c) or (d) of this section as the Commissioner may require.

(a) A policy of title insurance with respect to such mortgage, issued by a company satisfactory to the Commissioner. Such policy shall comply with the "L. I. C. Standard Mortgagee Form," or the "A. T. A. Standard Mortgagee Form," or such other form as may be approved by the Commissioner; shall be payable to the mortgagee and the Commissioner as their respective interests may appear; and shall become an owner's policy, running to the mortgagee as owner upon the acquisition of the property by the mortgagee in extinguishment of a debt through foreclosure or by other means, and to the Commissioner as owner upon the acquisition of the property by him pursuant to the mortgage insurance contract.

(b) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

(c) A Torrens or similar title certificate.

(d) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or Territory thereof.

AMENDMENTS AND EFFECTIVE DATE

§ 232.95 Amendment of regulations.

The regulations in this subpart may be amended by the Commissioner, but such amendments shall not affect any insured mortgage or any outstanding commitment.

§ 232.100 Effective date.

Unless otherwise specified, the regulations in this subpart shall be effective as to all mortgages with respect to which a commitment is issued on or after the date hereof.

Subpart B—Contract Rights and Obligations

§ 232.251 Incorporation by reference.

(a) All of the provisions of Part 207 of this chapter covering mortgages insured under section 207 of the National Housing Act apply to mortgages on nursing homes insured under section 232 of the National Housing Act except the following provision: § 207.264 Effective date.

(b) For the purposes of this subpart all references in Part 207 of this chapter to section 207 of the Act shall be construed to refer to section 232 of the Act.

§ 232.252 Definitions.

All of the definitions contained in 232.1 shall apply to this subpart. In addition, as used in this part, the following term shall have the meaning indicated:

(a) "Contract of insurance" means the agreement evidenced by the Commissioner's insurance endorsement and includes the provisions of this subpart and of the Act.

§ 232.345 Amendment of regulations.

The regulations in this subpart may be amended by the Commissioner, but such amendments shall not affect any insured mortgage or any outstanding commitment.

§ 232.350 Effective date.

Unless otherwise specified, the regulations in this subpart shall be effective as to all mortgages with respect to which a commitment is issued on or after the date hereof.

SUBCHAPTER K—EXPERIMENTAL HOUSING INSURANCE

PART 233—EXPERIMENTAL HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Homes

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233.5 Maximum mortgage amounts.
233.10 Mortgagor's minimum investment.
233.15 Eligible property.
233.20 Covenants and easements.
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233.251 Incorporation by reference.
233.260 Reimbursement for uncollected interest.
233.261 Application for insurance benefits and fiscal data.
233.265 Conditions for withdrawal of application for insurance benefits.
233.266 Reconveyance for noncompliance with Regulations.
233.267 Mortgagee's liability for property expenditures.
233.268 Mortgagee's liability for waste.
233.269 Adjustment for waste.
233.270 Adjustment for fire, flood, earthquake or tornado damage.
233.272 Cancellation of hazard insurance.
233.275 Payment of insurance benefits.
233.276 Insurance benefits computation—conveyed properties.
233.277 Insurance benefits computation—conveyed properties; items included.
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233.285 Delivery of certificate of claim.
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Subpart C—Eligibility Requirements—Projects

233.501 Incorporation by reference.
233.505 Eligible projects.
233.510 Agreements, covenants and easements.
233.515 Maximum mortgage amounts.
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Subpart D—Contract Rights and Obligations—Projects

233.751 Incorporation by reference.
233.760 Payment of insurance benefits.
233.850 Effective date.

AUTHORITY: §§ 233.1 to 233.850 issued under sec. 211, 52 Stat. 23, sec. 233, 75 Stat. 159; 12 U.S.C. 1715b.

Subpart A—Eligibility Requirements—Homes

§ 233.1 Incorporation by reference.

(a) All of the provisions of Part 203 of this chapter concerning eligibility requirements of mortgages covering one- to four-family dwellings under section 203 of the National Housing Act apply to mortgages on dwellings insured under section 233 of the National Housing Act except the following provisions:

Sec.
203.18 Maximum mortgage amounts.
203.19 Mortgagor's minimum investment.
203.28 Economic soundness of project.
203.249 Effective date.

(b) For the purposes of this subpart all references in Part 203 of this chapter to section 203 of the National Housing Act shall be construed to refer to section 233 of the National Housing Act.

§ 233.5 Maximum mortgage amounts.

(a) *Occupant mortgagors.* A mortgage executed by a mortgagor who is the occupant of the property shall not exceed the lesser of the following:

(1) Depending upon the design of the structure;

(i) $25,000 for a one-family residence;

(ii) $27,500 for a two-family residence;

(iii) $27,500 for a three-family residence;

(iv) $35,000 for a four-family residence;

(2) 97 percent of $15,000 of the Commissioner's estimate of the cost of replacing the property using comparable conventional design, materials and construction, or 97 percent of $15,000 of the Commissioner's estimate of the cost of construction utilizing advanced housing technology or experimental property standards, whichever is the lesser, as of the date the mortgage is accepted for insurance and 90 percent of such cost in excess of $15,000, but not in excess of $20,000, and 75 percent of such cost in excess of $20,000.

(b) *Nonoccupant mortgagors.* A mortgage executed by a mortgagor who is not the occupant of the property shall not exceed 85 percent of any amount computed under paragraph (a) of this section.

§ 233.10 Mortgagor's minimum investment.

data or experience which the Commis-

under sec. 211, 52 Stat. 23, sec. 233, 75 Stat. 159; 12 U.S.C. 1715b.

computed under paragraph (a) of this section.

§ 233.10 Mortgagor's minimum investment.

At the time the mortgage is insured the mortgagor shall have paid on account of the property at least 3 percent of the Commissioner's estimate of the cost of acquisition or such larger amount as the Commissioner may determine in cash or its equivalent.

§ 233.15 Eligible property.

To be eligible for insurance:

(a) The mortgage shall cover property involving the utilization and testing of advanced technology in housing design, materials, or construction, on experimental property standards for neighborhood design if the Commissioner determines that:

(1) The property is an acceptable risk, giving consideration to the need for testing advanced housing technology or experimental property standards; and

(2) The utilization and testing of the advanced technology or experimental property standards involved will provide data or experience which the Commissioner deems to be significant in reducing housing costs or improving housing standards, quality, livability, or durability or improving neighborhood design; and

(b) The dwelling shall be approved for insurance by the Commissioner prior to the beginning of construction.

§ 233.20 Agreements, covenants and easements.

Prior to insurance, the mortgagor shall execute such agreements, covenants and easements running with the land as the Commissioner shall determine are necessary to permit the Commissioner to make inspections and technical observations of the experimental features of the project.

§ 233.100 Effective date.

Unless otherwise specified the provisions of this subpart shall be effective as to all mortgages with respect to which a commitment to insure is issued on or after July 7, 1961.

Subpart B—Contract Rights and Obligations—Homes

§ 233.251 Incorporation by reference.

(a) All of the provisions of Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to mortgages on one- to four-family dwellings insured under section 233 of the National Housing Act except the following provisions:

Sec.

203.498 Applicability to outstanding loans and commitments.
203.499 Effective date.
203.341 Reimbursement for uncollected interest.
203.351 Application for debentures and fiscal data.
203.362 Conditions for withdrawal of application for debentures.
203.363 Reconveyance for noncompliance with regulations.
203.364 Mortgagee's liability for property expenditures.
203.377 Mortgagee's liability for waste.
203.378 Adjustment for waste.
203.379 Adjustment for fire, flood, earthquake or tornado damage.
203.382 Cancellation of hazard insurance.
203.400 Delivery of debentures.
203.401 Debenture computation—conveyed properties.
203.402 Debenture computation—conveyed properties; items included.
203.403 Debenture computation—conveyed properties; items deducted.
203.404 Debenture computation—assigned mortgages.
203.405 Debenture interest rate.
203.406 Maturity of debentures.
203.407 Registration of debentures.
203.408 Denomination of debentures.
203.409 Redemption of debentures.
203.410 Issue date of debentures.
203.411 Cash adjustment.
203.415 Delivery of certificate of claim.
203.416 Amount and items of certificate of claim.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.
203.422 Right and liability under Mutual Mortgage Insurance Fund.
203.423 Distribution of distributive shares.
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.
203.435 Form of assignment to investing mortgagee.

(b) For the purpose of this subpart all references in Part 203 of this chapter to section 203 of the National Housing Act shall be construed to refer to section 233 of the National Housing Act and all references to the Mutual Mortgage Insurance Fund shall be construed to refer to the Experimental Housing Insurance Fund.

§ 233.260 Reimbursement for uncollected interest.

If payments received from the mortgagor during the period of special forbearance relief approved pursuant to § 203.340 of this chapter, are not sufficient to pay interest at the mortgage rate, after applying such payments in the order set forth in the mortgage, and the mortgage is subsequently foreclosed, the insurance benefits shall include an allowance for uncollected interest accrued during the period of such forebearance.

§ 233.261 Application for insurance benefits and fiscal data.

On the date the assignment of the mortgage is filed for record the mortgagee shall forward to the Commissioner the prescribed application for insurance benefits and fiscal data pertaining to the mortgage transaction, together with receipts covering all disbursements, as required by the fiscal data form and other items as follows:

(a) *Credit and security instruments.* The original credit and security instruments assigned without recourse or warranty, except that no act or omission of the mortgagee shall have impaired the validity and priority of the mortgage;

(b) *Recorded assignment instrument.* The original of the recorded assignment of mortgage. If the original of the assignment is not available a copy shall be furnished and the original forwarded as soon as possible;

(c) *Hazard insurance.* All hazard insurance policies held in connection with the mortgaged property, together with a copy of the mortgagee's notification to the carrier authorizing the amendment of the loss payable clause substituting the Commissioner as the mortgagee;

(d) *Rights and interests.* An assignment of all rights and interests arising under the mortgage, and all claims of the mortgagee against the mortgagor or others arising out of the mortgage transaction;

(e) *Cash or property.* All cash or property held by the mortgagee or to

which it is entitled, including deposits made for the account of the mortgagor and which have not been applied in reduction of the principal mortgage indebtedness;

(f) *Records and accounts.* All records, ledger cards, documents, books, papers and accounts relating to the mortgage transaction;

(g) *Additional information.* Any additional information or data which the Commissioner may require.

§ 233.265 Conditions for withdrawal of application for insurance benefits.

With the consent of the Commissioner, a mortgagee may withdraw an application for insurance benefits if the mortgagee agrees that it will:

(a) Accept a reconveyance of the property under a deed which warrants against the acts of the Commissioner and all claiming by, through, or under him; and

(b) Promptly file a reconveyance for record; and

(c) Accept without continuation the title evidence which it furnished the Commissioner; and

(d) Reimburse the Commissioner for property expenditures as set forth in § 203.364 of this chapter.

§ 233.266 Reconveyance for noncompliance with regulations.

If for any reason, the mortgagee fails to comply with the regulations in this subpart, the Commissioner may hold processing of the application for insurance benefits in abeyance for a reasonable period of time in order to permit the mortgagee to comply or, in the alternative, the Commissioner may reconvey title to the property to the mortgagee in which event the application for insurance benefits shall be considered as cancelled without prejudice to the rights of the mortgagee to reapply for insurance benefits at a subsequent date as approved by the Commissioner.

§ 233.267 Mortgagee's liability for property expenditures.

In the event the Commissioner acquires any property and thereafter incurs an expense or makes an expenditure incidental to such property and it subsequently becomes necessary to reconvey the property to the mortgagee, because of the mortgagee's noncompliance with the regulations in this subpart or because, with the consent of the Commissioner a mortgagee withdraws an application for insurance benefits, the mortgagee shall assume liability for payment of all expenses incurred and unpaid by the Commissioner and reimburse the Commissioner for all expenditures made from the date the deed to the Commissioner was filed for record to the date of reconveyance of the property to the mortgagee, after appropriate adjustment on account of any income received from the property.

§ 233.268 Mortgagee's liability for waste.

(a) The mortgagee's liability for damage caused by waste shall not apply to mortgages on which the unpaid principal obligation (as increased by the amount of any open-end advances) at the time of the institution of foreclosure or the date of acquisition of the property otherwise after default exceeds 75 percent of the appraised value of the property as of the date the mortgage was accepted for insurance, and in any event, the obligation of the mortgagee to repair waste shall be limited to the amount of $100 for each family dwelling unit covered by the mortgage.

(b) Damage by waste, as defined in this subpart, which in the Commissioner's judgment does not exceed $25 shall not be considered as substantial injury and shall not be deducted from the insurance benefits settlement.

§ 233.269 Adjustment for waste.

If the property has been damaged by waste as defined in § 203.376 of this chapter, the Commissioner shall deduct from the insurance benefits to be issued to the mortgagee an amount not to exceed the Commissioner's estimate of the cost of repairing the waste damage but not to exceed the limitation of $100 for each family dwelling unit covered by the mortgage.

§ 233.270 Adjustment for fire, flood, earthquake or tornado damage.

If the property has been damaged by fire, flood, earthquake or tornado, such damage shall be repaired prior to conveyance of the property or the assignment of the mortgage to the Commissioner, except that if prior approval of the Commissioner is obtained the damaged property may be conveyed to him or mortgage assigned to him and he shall deduct from insurance benefits an amount not to exceed the greater of (a) his estimate of the cost of repairing such damage or (b) the insurance recovery.

§ 233.272 Cancellation of hazard insurance.

The mortgagee shall cancel any hazard insurance policy as of the date of the filing for record of the deed to the Commissioner subject to the following conditions:

(a) The amount of the return premium due the mortgagee because of such cancellation may be calculated on a "short-rate" basis and reported on fiscal data supporting the application for insurance benefits and the amount shall be deducted from the total amount claimed.

(b) If the mortgagee's calculation of the return premium is less than the actual return, the amount of the difference between the actual refund and the calculated amount shall be remitted to the Commissioner, accompanied by the carrier's or agent's statement.

(c) If the mortgagee's calculation of the return premium is more than the actual return, the mortgagee may file with the Commissioner a claim, supported by the carrier's or agent's statement of the amount of the refund, whereupon the Commissioner shall issue a check to the mortgagee in settlement of the claim.

§ 233.275 Payment of insurance benefits.

If the application for insurance benefits is acceptable to the Commissioner he shall deliver to the mortgagee cash of the Experimental Housing Insurance Fund.

§ 233.276 Insurance benefits computation—conveyed properties.

The cash settlement shall be determined by adding to the original principal of the mortgage (as increased by the amount of open-end advances made by the mortgagee and approved by the Commissioner) which was unpaid on the date of the institution of foreclosure proceedings, the acquisition of the property otherwise after default, or the property was acquired by the Commissioner under a direct conveyance by the mortgagor, the amount of all payments made by the mortgagee and allowances for items as set forth in § 233.277 less all items as set forth in § 233.278.

§ 233.277 Insurance benefits computation—conveyed properties; items included.

The amount of the cash settlement in connection with properties conveyed to the Commissioner shall include the following items:

(a) Taxes, ground rent and water rates, which are liens prior to the mortgage;

(b) Special assessments, which are noted on the application for insurance or which become liens after the insurance of the mortgage;

(c) Hazard insurance on the mortgaged property;

(d) MIP or open-end insurance charges paid after the institution of foreclosure proceedings or the acquisition of the property by direct conveyance or otherwise after default;

(e) Taxes imposed upon any deeds or other instruments by which said property was acquired by the mortgagee and transferred or conveyed to the Commissioner;

(f) Foreclosure costs or costs of acquiring the property otherwise (including costs of acquiring the property by the mortgagee and of conveying and evidencing title to the property to the Commissioner) actually paid by the mortgagee and approved by the Commissioner in an amount not in excess of two-thirds of such costs or $75, whichever is the greater;

(g) Reasonable payments made by the mortgagee, with the approval of the Commissioner, for the purpose of protecting, operating, or preserving the property;

(h) Any uncollected mortgage interest allowed pursuant to an approved forbearance plan.

§ 233.278 Insurance benefits computation—conveyed properties; items deducted.

There shall be deducted from the total of the added items in §§ 233.276 and 233.277 any amount received on account of the mortgage after the institution of foreclosure proceedings or the acquisition of the property by direct conveyance or otherwise after default and from any source relating to the property on account of rent or other income after

deducting reasonable expenses incurred in handling the property.

§ 233.279 Insurance benefits computation—assigned mortgages.

Upon an acceptable assignment of a mortgage the Commissioner shall issue to the mortgagee cash equal to the unpaid balance of the loan at the time of assignment, plus any accrued mortgage interest and any advances made under the mortgage and approved by the Commissioner.

§ 233.285 Delivery of certificate of claim.

In addition to the cash settlement provided for in this subpart with respect to properties conveyed to the Commissioner, the Commissioner shall deliver to the mortgagee a certificate of claim in accordance with section 204(e) of the Act, which shall become payable, if at all, in accordance with section 204(f) of the Act.

§ 233.286 Amount and items of certificate of claim.

The certificate shall be for an amount which the Commissioner determines to be sufficient to pay all amounts due under the mortgage and not covered by the amount of cash settlement. The certificate shall include a reasonable amount for necessary expenses incurred by the mortgagee in connection with the foreclosure proceedings or the acquisition of the mortgaged property otherwise and the conveyance thereof to the Commissioner, including reasonable attorneys' fees, unpaid interest, and cost of repairs to the property made by the mortgagee to remedy the waste.

§ 233.350 Effective date.

Unless otherwise specified, the provisions of this subpart shall be effective as to all mortgages with respect to which a commitment to insure is issued on or after July 7, 1961.

Subpart C—Eligibility Requirements—Projects

§ 233.501 Incorporation by reference.

(a) All of the provisions of Part 207 of this chapter concerning eligibility requirements of mortgages covering multifamily housing under section 207 of the National Housing Act apply to experimental multifamily project mortgages insured under section 233 of the National Housing Act except the following provisions:

Sec.
207.4 Maximum mortgage amounts.
207.11 Soundness of project.
207.24 Development of property.
207.29 Rehabilitation projects.
207.32 Eligibility of refinanced mortgages.
207.33 Eligibility of mortgages on trailer courts or parks for trailer coach mobile dwellings.
207.34 Reinsurance of Commissioner-held mortgages.
207.37 Effective date.

§ 233.505 Eligible projects.

To be eligible for insurance under this subpart a mortgage shall cover property on which there is constructed a multifamily housing project involving the utilization and testing of advance technology in housing design, materials, or construction, or experimental property standards for neighborhood design if the Commissioner determines that:

(a) The property is an acceptable risk, giving consideration to the need for testing advanced housing technology or experimental property standards; and

(b) The utilization and testing of the advanced technology or experimental property standards involved will provide data or experience which the Commissioner deems to be significant in reducing housing costs or improving housing standards, quality, livability, or durability, or improving neighborhood design.

§ 233.510 Agreements, covenants and easements.

Prior to initial endorsement, the mortgagor shall execute such agreements, covenants and easements running with the land as the Commissioner shall determine are necessary to allow the Commissioner to make inspections and technical observations of the experimental features of the project.

§ 233.515 Maximum mortgage amounts.

(a) *Dollar and loan-to-value limitations.* A mortgage may involve a principal obligation not in excess of the lesser of the following:

(1) $20,000,000 if executed by a Private Mortgagor;

(2) $50,000,000 if executed by a Public Mortgagor;

(3) 90 percent of the amount of the Commissioner's estimate of the cost of replacing the project using comparable conventional design, materials and construction;

(4) $2,500 per room (or $9,000 per family unit if the number of rooms in such project does not equal or exceed four per family unit) for such part of such project as may be attributable to dwelling use (excluding the cost of exterior land improvements as determined by the Commissioner);

(5) The amount which the Commissioner estimates will be the cost of the completed improvements of the project, exclusive of public utilities, streets, and organizational and legal expenses.

(b) *Increased mortgage amount—elevator type structures.* In order to compensate for the higher costs incident to cost of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitation of $2,500 per room to not to exceed $3,000 per room and the dollar amount limitation of $9,000 per family unit to not to exceed $9,400 per family unit.

(c) *Increased mortgage amount—high cost areas.* (1) In any geographical area where the Commissioner finds cost levels so require, the Commissioner may increase the dollar amount limitation by an amount not to exceed $1,250 per room without regard to the number of rooms being less than four, or more than four.

(2) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and libability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases, if any, other-

wise applicable by more than one-half thereof.

(d) *Reduced mortgage amount-leaseholds.* The maximum mortgage amount based upon the limitations of this section is subject to reduction by an amount equal to the capitalized value of the ground rent in the event the mortgage is on a leasehold estate rather than on a fee simple holding.

§ 233.520 Development of property.

(a) *Type of construction and design.* At the time the mortgage is insured the mortgagor shall be obligated to construct and complete new housing accommodations on the mortgaged property, designed principally for residential use, conforming to standards satisfactory to the Commissioner, and consisting of not less than eight rental dwelling units on one site and may be detached, semi-detached, or row houses, or multi-family structures; except that the Commissioner may insure a mortgage on a completed project constructed pursuant to a Commitment to Insure upon Completion; and

(b) *Compliance with restrictions and regulations.* At the time the mortgage is insured all dwellings and other improvements shall:

(1) Comply with all applicable building and other governmental regulations; and

(2) Not violate any material, zoning or deed restrictions applicable to the site of the project.

(c) *Commercial and community facilities.* The project may include such commercial and community facilities as the Commissioner deems adequate to serve the occupants.

§ 233.600 Effective date.

Unless otherwise specified the provisions of this subpart shall be effective as to all mortgages with respect to which a commitment to insure is issued on or after July 7, 1961.

Subpart D—Contract Rights and Obligations—Projects

§ 233.751 Incorporation by reference.

(a) All the provisions of Part 207 of this chapter, covering mortgages insured under section 207 of the National Housing Act, apply with full force and effect to experimental multifamily project mortgages insured under section 233 of the National Housing Act, except the following provisions.

Sec.
207.259 Insurance benefits.
207.264 Effective date.

(b) For the purpose of this subpart all references in Part 207 of this chapter to section 207 of the National Housing Act shall be deemed to refer to section 233 of the National Housing Act and all references to the Housing Insurance Fund or the Housing Fund shall be construed to refer to the Experimental Housing Insurance Fund.

§ 233.760 Payment of insurance benefits.

All of the provisions of § 207.259 of this chapter shall govern the payment of insurance to the mortgagee except that:

(a) In lieu of issuing debentures and making a cash adjustment, as provided in § 207.259, the Commissioner shall pay to the mortgagee in cash of the Experimental Housing Insurance Fund an amount equivalent to the total face amount of debentures and the cash adjustment provided for in § 207.259; and

(b) In computing the amount of the certificate of claim, the amount of the cash payment to the mortgagee, as provided in paragraph (a), shall be substituted for the face value of the debentures and the cash adjustment paid to the mortgagee.

§ 233.850 Effective date.

Unless otherwise specified the provisions of this subpart shall be effective as to all mortgages with respect to which a commitment to insure is issued on or after July 7, 1961.

Sec.

EFFECTIVE DATE

(i) "Beginning of amortization" means the date one month prior to the date of

(b) The application fee will be returned:

Subchapter L—Mortgage Insurance for Individually Owned Units in Multifamily Structures

PART 234—CONDOMINIUM OWNERSHIP

Subpart A—Eligibility Requirements

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OPEN END ADVANCES

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234.260 Assignment of mortgage and certificate by mortgagee.
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234.285 Waived title objections.
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234.300 Effective date.

AUTHORITY: §§ 234.1 to 234.300 issued under sec. 211, 52 Stat. 23, as amended, sec. 234, 75 Stat. 161; 12 U.S.C. 1715b.

Subpart A—Eligibility Requirements

DEFINITIONS

§ 234.1 Definitions used in this subpart.

As used in this subpart, the following terms shall have the meaning indicated:

(a) "Commissioner" means the Federal Housing Commissioner or his authorized representative.

(b) "Act" means the National Housing Act, as amended.

(c) "FHA" means the Federal Housing Administration.

(d) "Mortgage" means a first lien covering a fee interest, or eligible leasehold interest, in a one family unit in a multifamily structure, including an undivided interest in, or share in cooperative ownership of, the common areas and facilities serving the multifamily structure, and such restricted common areas and facilities as may be designated.

(e) "Mortgagor" means the original borrower under a mortgage and his heirs, executors, administrators and assigns.

(f) "Mortgagee" means the original lender under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

(g) "Insured mortgage" means a mortgage which has been insured as evidenced by the endorsement of the credit instrument for insurance by the Commissioner.

(h) "Project mortgage" means a mortgage insured under any section, other than Section 213, of the FHA multifamily housing programs covering a multifamily structure.

(i) "Beginning of amortization" means the date one month prior to the date of the first monthly payment to principal and interest.

(j) "Family unit" means a one family unit including the undivided interest in, or share in cooperative ownership of, the common areas and facilities, and such restricted common areas and facilities as may be designated.

(k) "Multifamily structure" is a structure containing 5 or more one family units which is or has been covered by a project mortgage insured under the Act.

(l) "Common areas and facilities" means those areas of the structure and of the property upon which it is located that are for the use and enjoyment of the owners of family units located in the structure, which areas may include but are not limited to the land, roofs, main walls, elevators, staircases, lobbies, halls, parking space, community and commercial facilities.

(m) "Restricted common areas and facilities" means those areas and facilities restricted to a particular family unit or number of family units.

APPROVAL OF MORTGAGEES

§ 234.5 Qualification of lenders.

The provisions of §§ 203.1 to 203.9, inclusive, of this chapter, shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

APPLICATION AND COMMITMENT

§ 234.10 Submission of application.

Any approved mortgagee may submit an application for insurance of a mortgage under this subpart.

§ 234.11 Form of application.

An application for insurance shall be made upon a standard form prescribed by the Commissioner.

§ 234.12 Approval and commitment.

Upon approval of an application, acceptance of the mortgage for insurance shall be evidenced by the issuance of a commitment setting forth, upon a form prescribed, by the Commissioner, the terms and conditions upon which the mortgage will be insured.

§ 234.13 Application fee.

(a) Applications filed for a commitment shall be accompanied by the mortgagee's check for the sum of $20 to cover the cost of processing.

(b) The application fee will be returned:

(1) If an application is refused as a result of preliminary examination;

(2) If the application is made on behalf of a veteran for the insurance of a mortgage to refinance an existing insured mortgage which is in default by reason of his military service, and the Commissioner finds that the collection of such fee would be inequitable under the circumstances of the transaction. For the purposes of this chapter the word "veteran" shall mean a person who has served in the active military or naval service of the United States at any time on or after September 16, 1940, and prior to July 26, 1947, or on or after June 27, 1950, and prior to February 1, 1955;

(3) In such other instances as the Commissioner may determine.

§ 234.14 Certification of appraisal amount.

An application for insurance shall be accompanied by an agreement satisfactory to the Commissioner, executed by the seller or such other person as may be required by the Commissioner whereby such person agrees that prior to any sale of the dwelling he will deliver to the purchaser of the property a written statement in form satisfactory to the Commissioner setting forth the amount of the appraised value of the property as determined by the Commissioner.

§ 234.15 Certificate and contract regarding use of dwelling for transient or hotel purposes.

An application for insurance of a mortgage on a family unit which is one of a group of 5 or more family units owned by the same mortgagor shall be accompanied by a contract, in form satisfactory to the Commissioner, signed by the proposed mortgagor covenanting and agreeing that so long as the proposed mortgage is insured by the Commissioner the mortgagor will not rent the housing or any part thereof covered by the mortgage for transient or hotel purposes, together with the mortgagor's certification under oath that the housing or any part thereof covered by the proposed mortgage will not be rented for transient or hotel purposes. For the purpose of this subchapter rental for transient or hotel purposes shall mean (a) rental for any

period less than 30 days; or (b) any rental if the occupants of the unit are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linen, and bellboy service.

ELIGIBLE MORTGAGES

§ 234.25 Mortgage provisions.

(a) *Mortgage form.* The mortgage shall be executed upon a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated and shall be a first lien upon property that conforms with property standards prescribed by the Commissioner. The entire principal amount of the mortgage must have been disbursed to the mortgagor or to his creditors for his account and with his consent.

(b) *Mortgage multiples.* The mortgage shall involve a principal obligation in $100 multiples. A mortgage having a principal obligation not in excess of $15,000 and an amortization period of either 20, 25, or 30 years may be in $50 multiples.

(c) *Payments and maturity dates.* The mortgage shall:

(1) Come due on the first of a month;

(2) Have a maturity satisfactory to the Commissioner not to be less than 10 nor more than 30 years from the date of the beginning of amortization of the mortgage or three-quarters of the Commissioner's estimate of the remaining economic life of the building improvements, whichever is the lesser;

(3) Have an amortization period of either 10, 15, 20, 25, or 30 years by providing for either 120, 180, 240, 300, or 360 monthly amortization payments.

(4) Provide for payments to principal and interest to begin not later than the first day of the month following 60 days from the date the mortgagee's certificate on the commitment was executed.

§ 234.26 Eligibility—family unit, multifamily structure, and plan of apartment-ownership.

No mortgage shall be eligible for insurance unless the following requirements are met:

(a) *Location of family unit.* The family unit shall be located in a multifamily structure which is or has been covered by a project mortgage insured by the FHA.

(b) *Plan of apartment ownership.* The multifamily structure in which the family unit is located shall have been committed to a plan of apartment-ownership by enabling deed, deed of constitution, public deed, or other recorded instrument which has been approved by the Commissioner prior to its execution, and which is certified by the mortgagee as acceptable and binding within the jurisdiction where the multifamily structure is located. The plan of apartment ownership, as recorded, shall include the following:

(1) Description of land and the multifamily structure describing their respective areas.

(2) Description and number of each family unit expressing its measurements, location, rooms, main entrance door, and immediate place with which it communicates, and any other data necessary for its identification.

(3) Description of the common areas and facilities.

(4) Clear expression of the purpose to which the multifamily structure and each of the family units are destined, in particular designating the family units destined to be sold by the original owner subject to all of the provisions of the plan and stating that as of the date the multifamily structure is committed to apartment-ownership the original owner is likewise subject to the provisions of the plan.

(5) Basic value, not in excess of the FHA appraised value, of the multifamily structure and each family unit, and, according to these basic values, the percentage appertaining to each owner in the expenses and profits of, the rights in, the common areas and facilities.

(6) Everything relative to the administration of the property by an Association or a Cooperative of Owners in particular but not limited to, (i) provisions requiring each owner of a family unit and his successors to pay to the Association or Cooperative of Owners his proportionate share in the common expenses at such times as the Association or the Cooperative shall require on the basis of the basic value of each family unit to the total value of all family units in the structure, and permitting each owner the proportionate representation determined on the same basis for voting purposes in the Association or Cooperative of Owners but providing that regardless of the value or number of units owned, no owner shall be entitled to more than an FHA approved percentage for voting purposes except that such restriction shall not apply to the FHA or the mortgagee, (ii) provisions establishing that each owner of a family unit and his successors is automatically a member of the Association or Cooperative of Owners and that membership terminates upon the sale or other transfer of the family unit to a new member who thereby automatically becomes a member of the Association or Cooperative of Owners, and (iii) provisions incorporating by reference the charter of, if any, by-laws of, the Association or Cooperative, and the Administrative Regulations for the management of the property.

(7) Provision requiring that the plan for apartment-ownership and the provisions relating to the administration of the property cannot be changed without prior approval by the FHA.

(c) *FHA conversion and release plans.* The initial conversion of the multifamily structure to apartment-ownership shall be required to comply with an FHA-approved conversion plan. The conversion plan shall require:

(1) The termination of the FHA insurance contract for any FHA-insured project mortgage covering the multifamily structure by the payment in full of such project mortgage or by voluntary termination as approved by the Commissioner;

(2) The release of each family unit from any existing project mortgage or mortgages covering the multifamily structure pursuant to a release plan approved by the FHA which provides for a payment to be made on the outstanding balance of such project mortgage or mortgages in an amount equal to the share of such balance determined by the FHA to be attributable to the family unit;

(3) The conveyance to FHA approved owners of family units equal in value to at least 80 percent of the total value of all of the family units.

(d) *Certificates by mortgagee.* The mortgagee shall certify that:

(1) The individual deed for the family unit to be covered by an FHA-insured mortgage complies with all legal requirements of the jurisdiction and that ownership thereunder is subject to the plan of apartment-ownership; and

(2) The Mortgagor has good and marketable title to the family unit subject only to the mortgage which is a valid first lien on same; and

(3) Property taxes in the jurisdiction where the family units are located are assessed and levied against each family unit as a taxable entity and are not assessed and levied against the multifamily structure.

(e) *Mortgagor limitations.* The family unit to be covered by an insured mortgage shall be for the use and occupancy of the mortgagor or the mortgagor shall be the owner of another family unit covered by an insured mortgage for such use and occupancy. The mortgagor may not own more than four family units covered by insured mortgages, one of which shall be for his own use and occupancy.

(f) *FHA controls for consumer and public interest.* The Commissioner may require such conditions and provisions as he deems necessary for the protection of the consumer and public interest, including but not limited to the execution of a regulatory agreement between the Owners and the Commissioner which shall be made applicable to the Association or Cooperative of Owners or to any subsequent owner of a family unit.

§ 234.27 Maximum mortgage amounts.

(a) *Occupant mortgagors.* A mortgage executed by a mortgagor who is an occupant of the unit shall not exceed the lesser of the following:

(1) $25,000;

(2) 97 percent of $13,500 of the appraised value of the property, as of the date the mortgage is accepted for insurance, and 90 percent of such value in excess of $13,500 but not in excess of $18,000, and 70 percent of such value in excess of $18,000;

(3) $2,500 per room (or $9,000 per family unit, if the number of rooms is less than four per family unit) for such part of the family unit as may be attributable to dwelling use (excluding exterior land improvements as defined by the Commissioner).

(b) *Increased mortgage amount—elevator type structures.* In order to compensate for the higher costs incident to cost of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitation of $2,500

per room to not to exceed $3,000 per room, and the limitation of $9,000 per

ing principal amount of the mortgage as of the due date of the 18th amortization payment of the mortgage;

termined by the Commissioner. The sum of the principal and interest payments in each month shall be substanti-

purpose of paying ground rents, taxes, assessments and insurance premiums before they become delinquent. The

by the FHA.

per room to not to exceed $3,000 per room, and the limitation of $9,000 per family unit to not to exceed $9,400 per family unit.

(c) *Increased mortgage amount—high cost areas.* (1) In any geographical area where the Commissioner finds cost levels so require, the Commissioner may increase the dollar amount limitations by an amount not to exceed $1,250 per room without regard to the number of rooms being four, less than four, or more than four;

(2) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased in such amounts as the Commissioner finds may be necessary to compensate for such costs, but not to exceed, in any event, the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

(d) *Nonoccupant mortgagors.* A mortgage executed by a mortgagor who is not the occupant of the unit shall not exceed:

(1) 85 percent of any amount computed under this section; or

(2) The full amount computed under this section if the mortgage covers a unit and the Commissioner is furnished with certificates indicating that:

(i) The mortgagor will not rent (except for a rental term of not less than 30 days and not more than 60 days), sell (except where the insured mortgage is paid in full as an incident of the sale), or occupy the property prior to the 18th amortization payment of the mortgage except with the prior written approval of the Commissioner;

(ii) Not less than 15 percent of the original principal amount of the mortgage proceeds has been deposited in an escrow, trust, or special account;

(iii) The mortgagor agrees that, if the property is not sold prior to the due date of the 18th amortization payment of the mortgage to a purchaser acceptable to the Commissioner who will occupy the property, assume, and agree to pay the mortgage indebtedness, the amount held in escrow, trust, or special account shall be applied in reduction of the outstanding principal amount of the mortgage as of the due date of the 18th amortization payment of the mortgage;

(iv) The mortgagee agrees that any portion of the fund held in escrow, trust, or special account, not applied to the mortgage in accordance with the provisions of this paragraph, shall be deducted from the amount of debentures to which the mortgagee would otherwise be entitled if a claim for debentures is filed.

§ 234.28 Mortgagor's minimum investment.

(a) At the time the mortgage is insured the mortgagor shall have paid on account of the family unit at least 3 percent of the Commissioner's estimate of the cost of acquisition or such larger amount as the Commissioner may determine in cash or its equivalent.

(b) A mortgagor who is 62 years of age or older as of the date the mortgage is accepted for insurance may borrow from a corporation or person satisfactory to the Commissioner, the payment required by this section, plus settlement costs which may include initial payments for taxes, hazards insurance, mortgage insurance premium and other prepaid expenses as determined by the Commissioner. As security for the loan the mortgagor may give a note or other evidence of indebtedness bearing interest at a rate not in excess of that permitted in the insured mortgage. The aggregate amount of the insured mortgage and the loan referred to in this section shall not exceed an amount equal to the Commissioner's estimate of the appraised value of the property, plus an amount equal to the initial payments for taxes, hazard insurance, mortgage insurance premium, and other prepaid expenses as determined by the Commissioner.

§ 234.29 Maximum interest rate.

The mortgage may bear interest at such rate as may be agreed upon by the mortgagee and mortgagor, but in no case shall such interest rate be in excess of 5¼ percent. Interest shall be payable in monthly installments on the principal then outstanding.

§ 234.36 Amortization provisions.

The mortgage shall contain complete amortization provisions satisfactory to the Commissioner, requiring monthly payments by the mortgagor not in excess of his reasonable ability to pay as determined by the Commissioner. The sum of the principal and interest payments in each month shall be substantially the same.

§ 234.37 Payment of insurance premiums or charges; adjusted mortgage insurance premiums.

(a) The mortgage shall provide for monthly payments by the mortgagor to the mortgagee of an amount equal to one-twelfth of the annual mortgage insurance premium payable by the mortgagee to the Commissioner. If the mortgage contains a provision permitting the holder to make future "open-end" advances or is amended or modified to include such a provision, the mortgage shall provide for a monthly payment by the mortgagor of an amount equal to one-twelfth of the annual charge, payable by the mortgagee to the Commissioner for insurance of such advances. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) The mortgage shall provide that upon the payment of the mortgage before maturity, the mortgagor shall pay the adjusted mortgage insurance premium referred to in this subchapter, but shall not provide for the payment of any further charge on account of such prepayment.

§ 234.38 Mortgage provisions for additional payments.

The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize any ground or lease rents and the estimated amount of any taxes, special assessments and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which such charges become delinquent. Where the foregoing expenses or any other expenses are to be paid by the Association or Cooperative of Owners by special assessments levied against the owner of the family unit, the mortgage may provide for such equal monthly payments by the mortgagor as will amortize such special assessments, within a period ending one month prior to the date on which the assessments become delinquent. The mortgage shall further provide that payments shall be held by the mortgagee for the benefit and account of the mortgagor in a manner satisfactory to the Commissioner, for the purpose of paying ground rents, taxes, assessments and insurance premiums before they become delinquent. The mortgage must also make provision for adjustments in case the estimated amount of taxes, assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof paid by the mortgagor.

§ 234.39 Application of payments.

(a) All monthly payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate amount thereof shall be paid by the mortgagor each month in a single payment. The mortgagee shall apply the aggregate payment to the following items in the order set forth:

(1) Premium charges under the contract of insurance, including insurance charges for open-end advances;

(2) Ground rents, taxes, special assessments, and fire and other hazard insurance premiums;

(3) Service charge, if any;

(4) Interest on the mortgage;

(5) Amortization of the principal of the mortgage; and

(6) Any deficiency in the amount of any aggregate monthly payment shall, unless made good by the mortgagor prior to, or on, the due date of the next aggregate payment, constitute a default under the mortgage.

§ 234.46 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed 2 cents for each dollar of each payment more than 15 days in arrears, to cover the extra expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

§ 234.47 Mortgagor's payments when mortgage is executed.

The mortgagor shall pay to the mortgagee, upon the execution of the mortgage, a sum sufficient to pay any ground rents and the estimated taxes, special assessments, and fire and other hazard insurance premiums for the period beginning on the date to which such ground rents, taxes, assessments, and insurance premiums were last paid and ending on the date of the first monthly payment under the mortgage plus an

amount sufficient to pay the mortgage insurance premium from the date of the closing of the loan to the date of the first monthly payment.

§ 234.48 Maximum charges, fees or discounts.

(a) The mortgagee may collect from the mortgagor the following charges, fees or discounts.

(1) A charge to compensate the mortgagee for expenses incurred in originating and closing the loan, the charge not to exceed $20 or 1 percent of the original principal amount of the mortgage, whichever is the greater;

(2) Reasonable and customary amounts for any of the following items:

(i) Recording fees and recording taxes or other charges incident to recordation;

(ii) Credit report;

(iii) Survey, if required by mortgagee or mortgagor;

(iv) Title examination; title insurance, if any;

(v) Such other reasonable and customary charges or fees as may be authorized by the Commissioner.

(b) Prior to insurance of any mortgage, the mortgagee shall furnish to the Commissioner a signed statement in form satisfactory to the Commissioner, listing all items for which any charge, fee or discount was collected by it, from the mortgagor, together with the amount of each such charge, fee or discount. The Commissioner's endorsement of the mortgage for insurance shall constitute approval of the listed charges, fees or discounts.

(c) Nothing in this section shall be construed as prohibiting the mortgagor from dealing through a broker who does not represent the mortgagee, if he prefers to do so, and paying such compensation as is satisfactory to the mortgagor in order to obtain mortgage financing.

§ 234.49 Eligible mortgages in Alaska, Guam, or Hawaii.

If the Alaska Housing Authority or the Government of Guam or Hawaii or any agency or instrumentality thereof is the mortgagor or mortgagee, or if the mortgagor is regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods of operation to such an extent and in such manner as the Commissioner determines advisable to provide reasonable rental and sales prices and a reasonable return on the investment, any mortgage otherwise eligible for insurance under this subpart, may be insured without regard to any requirement that the mortgagor:

(1) Be the owner and occupant of the property;

(2) Has paid on account of the property a prescribed percentage of the appraised value of the property; or

(3) Certify that the mortgaged property be free and clear of all liens other than the mortgage offered for insurance and that there will not be any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of the mortgaged property.

(c) Economic soundness shall not be applicable to mortgages covering property located in Alaska or in Guam or in Hawaii, but the Commissioner shall find that the property is an acceptable risk giving consideration to the acute housing shortage in Alaska or in Guam, or in Hawaii.

§ 234.50 Racial restriction covenant.

The mortgage shall contain a covenant by the mortgagor that until the mortgage has been paid in full, or the contract of insurance otherwise terminated he will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the mortgaged property on the basis of race, color, or creed. Such covenant shall be binding upon the mortgagor and his assigns and shall provide that upon violation thereof the mortgagee may at its option, declare the unpaid balance of the mortgage immediately due and payable.

§ 234.51 Owner-occupancy in military service cases.

Any mortgage otherwise eligible for insurance under any of the provisions of this part may be insured without regard to any requirement contained in this part that the mortgagor be the occupant of the property at the time of insurance, where the Commissioner is satisfied that the inability of the mortgagor to occupy the property is by reason of his entry into military service subsequent to the filing of an application for insurance and the mortgagor expresses an intent (in such form as may be prescribed by the Commissioner), to occupy the property upon his discharge from military service.

ELIGIBLE MORTGAGORS

§ 234.55 Mortgage lien.

A mortgagor shall establish that after the mortgage offered for insurance has been recorded, the mortgaged property will be free and clear of all liens other than such mortgage and that there will not be outstanding any other unpaid obligation contracted in connection with the mortgage transaction or the purchase of the mortgaged property, except obligations which are secured by property or collateral owned by the mortgagor independently of the mortgaged property.

§ 234.56 Relationship of income to mortgage payments.

A mortgagor shall establish that the periodic payments required in the mortgage submitted for insurance bear a proper relation to his present and anticipated income and expenses.

§ 234.57 Credit standing.

A mortgagor shall have a general credit standing satisfactory to the Commissioner.

§ 234.58 Racial restrictions certificate.

A mortgagor shall certify that until the mortgage has been paid in full, or the contract of insurance otherwise terminated, he will not file for record any restriction upon the sale or occupancy of the mortgaged property on the basis of race, color or creed or execute any agreement, lease or conveyance affecting the mortgaged property which imposes any such restriction upon its sale or occupany.

§ 234.59 Certificate and contract regarding use of family units for transient or hotel purposes.

A mortgagor under a mortgage covering a one-family unit which is one of a group of five or more one-family units held by the same mortgagor shall certify under oath that until the mortgage is paid in full or the contract of insurance otherwise terminated, the mortgagor shall not rent, permit the rental, or permit the offering for rental of the housing units, or any part thereof, covered by such mortgage for transient or hotel purposes. The mortgagor shall further execute a contract with the Commissioner providing that so long as the said mortgage is insured he will not rent such housing or any part thereof, for transient or hotel purposes as defined in § 234.15.

ELIGIBLE PROPERTIES

§ 234.65 Nature of title.

A mortgage to be eligible for insurance shall be on a fee interest in, or on the leasehold interest in, a one-family unit in a multifamily structure including an undivided interest in, or a share in the cooperative ownership of, the common areas and facilities, and such restricted common areas and facilities as may be designated. To be eligible, a leasehold interest shall be under a lease for not less than 99 years which is renewable, or under a lease with a period of not less than 50 years to run from the date the mortgage is executed.

§ 234.66 Racial restrictions on property.

A mortgage must establish that no restriction upon the sale or occupancy of the mortgaged property, on the basis of race, color, or creed, has been filed of record at any time subsequent to February 15, 1950, and prior to the recording of the mortgage offered for insurance.

§ 234.67 Rental properties.

No family unit in a multifamily structure which has been committed to a plan of apartment ownership shall be rented or offered for rent for transient or hotel purposes as defined in § 234.15 so long as such family unit in such structure is subject to an FHA insured mortgage.

OPEN-END ADVANCES

§ 234.70 Eligibility of open-end advances.

Any approved mortgagee may make advances, referred to in this subpart as "open-end" advances, in connection with the mortgages previously insured under this subchapter or insured after the effective date of this subpart, subject to compliance with the requirements of this section.

(a) The proceeds of any open-end advance shall be used for the purpose of improvements or repairs which in the Commissioner's discretion substantially protect or improve the basic livability or utility of the property involved. The proceeds of such advances shall not be used for the purpose of financing obligations previously incurred for such repairs or improvements.

(b) The mortgagee shall submit an application for insurance of open-end

cient to amortize the aggregate principal amount within the remaining original

Subpart B—Contract Rights and Obligations

§ 234.265 Contents of deed and supporting documents.

(b) The mortgagee shall submit an application for insurance of open-end advances upon a standard form prescribed by the Commissioner.

(c) Applications filed must be accompanied by the mortgagee's remittance for the sum of $10 for processing of the application. If an application is refused as a result of preliminary examination by the Commissioner or in such other instances as the Commissioner may determine the entire fee will be returned to the applicant.

(d) In addition to the application fee required by paragraph (c) of this section, the mortgagee may charge the mortgagor a fee not to exceed $25 or 1 percent of the open-end advance, whichever is the lesser, and the amount of out-of-pocket expenditures made by the mortgagee for customary costs of title search and recording fees. The mortgagee may require the mortgagor to pay to the mortgagee all charges permitted under this section on or prior to the date of final disbursement of the open-end advance, together with a sum sufficient to pay the initial insurance charge provided for in Subpart B of this part. No portion of such charges may be included in the principal amount of the open-end advance.

(e) Upon approval of an application, acceptance of the advance for insurance will be evidenced by the issuance of a commitment setting forth, upon a form prescribed by the Commissioner, the terms and conditions upon which the advance will be insured.

(f) The amount of an advance for insurance shall be added to the unpaid principal obligation of the mortgage, whereupon the aggregate of the original unpaid principal and the amount of the open-end advance shall:

(1) Bear interest at the rate provided in such mortgage, payable in monthly installments on the principal then outstanding;

(2) Be payable in substantially equal monthly payments in an amount sufficient to amortize the aggregate principal amount within the remaining original term of the mortgage.

(g) The amount of any advance for insurance (computed in even dollar amounts) when added to the unpaid balance of the original principal obligation of the mortgage shall not exceed the original principal obligation of the mortgage: *Provided,* That if the mortgagor certifies that the proceeds of such open-end advance will be used to finance the construction of an additional room or rooms or other additional enclosed space as a part of the dwelling, the aggregate amount of the unpaid balance of the original principal obligation, plus the amount of the open-end advance, may exceed the amount of the original principal obligation of the mortgage, but in no event shall such aggregate amount exceed the maximum amounts prescribed by the limitations of §§ 234.27 and 234.49.

(h) A mortgagee may amend or modify any approved FHA mortgage form by adding such provisions as it deems necessary for the purpose of making open-end advances, by any rider or modification agreement which is valid and enforceable in the jurisdiction in which the property covered by the mortgage is located, provided such rider or modification agreement retains in the mortgagee the right to approve or disapprove additional advances on such terms and conditions as the mortgagee may prescribe. The mortgagee shall have the sole responsibility for determining that any mortgage amended by an "open-end" rider or modification agreement will be a valid and enforceable instrument and will constitute a valid first lien on the property upon which the Commissioner based his valuation.

EFFECTIVE DATE

§ 234.100 Effective date.

Unless otherwise specified the provisions of this subpart are effective as to all mortgages on which a commitment to insure is issued on or after July 27, 1961.

Subpart B—Contract Rights and Obligations

§ 234.251 Definitions.

The definitions contained in § 203.251 of this chapter and § 234.1 shall apply to this subpart.

§ 299.5 Incorporation by reference.

(a) *Provisions.* All of the provisions of Subpart B of Part 203 of this chapter covering mortgages insured under Section 203 of the National Housing Act shall apply to mortgages insured under Section 234 of the National Housing Act except the following provisions:

Sec.	
203.379	Adjustment for fire, flood, earth-earthquake, or tornado damage.
203.380	Certificate of property condition.
203.389	Waived title objections.
203.415	Delivery of certificate of claim.
203.420	Nature of Mutual Mortgage Insurance Fund.
203.421	Allocation of Mutual Mortgage Insurance Fund income or loss.
203.422	Right and liability under Mutual Mortgage Insurance Fund.
203.423	Distribution of distributive shares.
203.424	Maximum amount of distributive shares.
203.425	Finality of determination.
203.435	Form of assignment to investing mortgagee.
203.440 et seq.	Insured home improvement loans.

(b) *References.* For the purpose of this subpart all references in Subpart B of Part 203 of this chapter to Section 203 of the Act, one- to four-family, and the Mutual Mortgage Insurance Fund, shall be construed to refer to Section 234, one-family unit, and the Apartment Unit Insurance Fund. The term "property" or "each family dwelling unit" as used in Subpart B of Part 222 shall be construed to include "the one-family unit and the undivided interest in, or share of cooperative ownership of, the common areas and facilities".

§ 234.260 Assignment of mortgage and certificate by mortgagee.

In addition to the requirements of §§ 203.352 and 203.353 incorporated by reference, the mortgagee shall certify as to any changes in the plan of apartment ownership including the administration of the property. Any changes shall require FHA approval.

§ 234.265 Contents of deed and supporting documents.

In addition to the requirements of § 203.367, incorporated by reference, the deed shall comply with the plan of apartment ownership. Any changes therein, including the administration of the property, shall require FHA approval.

§ 234.270 Condition of the multifamily structure.

When a family unit is conveyed or a mortgage is assigned to the Commissioner, the family unit and the common areas and facilities including restricted common areas and facilities designated for the particular unit shall be undamaged by fire, earthquake or tornado, or such damage shall be repaired prior to the conveyance of the family unit to the Commissioner, except the family unit may be conveyed to the Commissioner or the mortgage assigned to him and he shall deduct his estimate of the decrease in value of the family unit from the debentures or the mortgee's fire and other hazard insurance recovery, whichever is the greater.

§ 234.275 Certificate of condition.

The mortgagee shall either certify that as of the date of the filing for record of the deed or assignment of the mortgage to the Commissioner, the family unit and the common areas and facilities including restricted common areas and facilities designated for the particular unit were undamaged by fire, flood, earthquake, tornado, or shall describe the damage to the family unit and the common areas and facilities including restricted common areas and facilities designated for the particular unit resulting from such hazards as of such date. In the absence of evidence to the contrary, the mortgagee's certificate or description of the damage shall be accepted by the Commissioner as establishing the condition of the family unit and the common areas and facilities including restricted common areas and facilities designated for the particular unit as of such date. Such certificate shall also relate to waste in the family unit to be transferred or assignment of mortgage covering same.

§ 234.280 Cancellation of hazard insurance.

The provisions of § 203.382 incorporated by reference shall apply to hazard insurance policies carried solely for the family unit.

§ 234.285 Waived title objections.

The Commissioner shall not object to title by reason of the following matters:

(a) Violations of a restriction based on race, color or creed, even where such restriction provides for a penalty of reversion or forfeiture of title or a lien for liquidated damage, provided that there has not been an adverse judgment or pending suit in connection with the violation existing on the date the property is conveyed to the Commissioner.

(b) Easements for public utilities along one or more of the property lines, provided the exercise of the rights thereunder do not interfere with any of the buildings or improvements located on the subject property.

(c) Encroachments on the subject property by improvements on adjoining property, provided such encroachments do not interfere with the use of any improvements on the subject property.

(d) Variations between the length of the subject property lines as shown on the application for insurance and as shown by the record or possession lines, provided such variations do not interfere with the use of any of the improvements on the subject property.

(e) Customary building or use restrictions for breach of which there is no reversion and which have not been violated to a material extent.

§ 234.290 Certificate of claim.

In addition to the debentures and the cash adjustment check, the Commissioner shall deliver to the mortgagee a certificate of claim in accordance with Section 204(e) of the Act, which shall become payable, if at all, in accordance with Section 204(b) of the Act, except that any excess remaining referred to in Section 204(b)(1) shall be retained by the Commissioner and credited to the Apartment Unit Insurance Fund.

§ 234.300 Effective date.

Unless otherwise specified the provisions of this subpart are effective as to all mortgages on which a commitment to insure is issued on or after July 27, 1961.

SUBCHAPTERS M–Q—[RESERVED]

SUBCHAPTER R—WAR HOUSING INSURANCE

PART 603—INDIVIDUAL HOMES; WAR HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements [Obsolete]

Subpart B—Contract Rights and Obligations

Sec.

603.251 Definitions.
603.252 Premiums.
603.253 Forbearance of foreclosure.
603.254 Voluntary termination of insurance.
603.255 Insurance endorsement.
603.256 Rights of parties on termination of insurance.
603.257 Time of default.
603.258 Transfer of property to the Commissioner; conditions of default in mortgage.
603.259 Condition of property when transferred; delivery of debentures; certificate of claim and definition of the term "waste."
603.260 Satisfactory title evidence.
603.261 Assignment of mortgages.
603.262 Termination of contract of insurance.
603.263 Amendments.
603.264 Effective date.

AUTHORITY: §§ 603.251 to 603.264 issued under secs. 603, 607, 55 Stat. 56, as amended, 61, as amended; 12 U.S.C. 1738, 1742.

Subpart A—Eligibility Requirements [Obsolete]

Subpart B—Contract Rights and Obligations

§ 603.251 Definitions.

As used in the regulations in this part:

(a) The term "Commissioner" means the Federal Housing Commissioner.

(b) The term "act" means the National Housing Act.

(c) The term "mortgage" means such a first lien upon real estate as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the jurisdiction where the real estate is situated, together with the credit instruments, if any, secured thereby.

(d) The term "insured mortgage" means a mortgage which has been insured by the endorsement of the Commissioner.

(e) The term "mortgagor" means the original borrower under a mortgage and his heirs, executors, administrators, and assigns.

(f) The term "mortgagee" means the original lender under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

(g) The term "contract of insurance" means the endorsement of the Commissioner upon the credit instrument given in connection with an insured mortgage, incorporating by reference the regulations in this subpart.

§ 603.252 Premiums.

(a) The mortgagee shall pay to the Commissioner, either in cash or debentures issued under Title VI of the National Housing Act at par plus accrued interest, mortgage insurance premiums in accordance with paragraphs (b) and (c) of this section which shall be calculated in accordance with the amortization provisions of the mortgage, without taking into account delinquent payments or prepayments.

(b) The initial mortgage insurance premium shall be paid on the date on which the insurance becomes effective by endorsement and shall cover the period beginning with the date of insurance endorsement and ending one year after the beginning of amortization. Regardless of whether such period is more or less than one year, a payment shall be made to the Commissioner on account of the initial mortgage insurance premium which payment shall be in an amount equal to ½ percent of the average outstanding principal obligation for the first year of amortization under the mortgage. If such payment is less than the minimum premium or more than the maximum premium prescribed by the act, the initial mortgage insurance premium shall be in the minimum amount prescribed by the act, and the amount of the second premium payment shall be adjusted accordingly; but if such payment is within the limitations prescribed by the act, no adjustment shall be made and the amount of the payment shall be retained by the Commissioner as the initial mortgage insurance premium.

(c) After payment of the initial mortgage insurance premium and until the mortgage is paid in full or until an application for debentures is received by the Commissioner, or until the contract of insurance is otherwise terminated with the consent of the Commissioner,

the mortgagee shall continue to pay an-

ceedings or in lieu of condemnation pro-

at the mortgage rate after applying such

(c) *Condition of property.* The prop-

the mortgagee shall continue to pay annual mortgage insurance premiums to the Commissioner. Such annual premium shall be paid on the anniversary date of the beginning of amortization and shall be in an amount equal to ½ percent of the average outstanding principal obligation for the 12-month period following the date on which the premium becomes payable.

(d) For the purpose of this section the term "beginning of amortization" shall mean the date one month prior to the date of the first monthly payment.

(e) In the event that the principal obligation of any mortgage accepted for insurance is paid in full prior to maturity, the mortgagee shall within 30 days thereafter notify the Commissioner of the date of prepayment. In the event the mortgage is paid in full before the due date of the 120th scheduled monthly payment, without taking into account delinquent payments or prepayments, the mortgagee shall pay to the Commissioner an adjusted premium charge of 1 percent of the original principal amount of the prepaid mortgage.

(f) In no event shall the adjusted premium exceed the aggregate amount of premium charges which would have been payable if the mortgage had continued to be insured until the due date of the 120th scheduled monthly payment, without taking into account delinquent payments or prepayments.

(g) No adjusted premium shall be due or payable in the following cases:

(1) Where at the time of such prepayment there is placed on the mortgaged property a new insured mortgage;

(2) Where the final maturity specified in the mortgage is accelerated solely by reason of partial prepayments made by the mortgagor which do not exceed in any one calendar year 15 percent of the original face amount of the mortgage; or by reason of partial prepayments made by the mortgagor in excess of 15 percent made during the period from May 27, 1941 through June 30, 1952;

(3) Where the final maturity specified in the mortgage is accelerated solely by reason of payments to principal to compensate for:

(i) Damage to the mortgaged property;

(ii) The conveyance of the mortgaged property pursuant to condemnation proceedings or in lieu of condemnation proceedings; or

(iii) A release of a part of such property if approved by the Commissioner;

(4) Where payment in full is made pursuant to a court order or of a delinquent mortgage on which foreclosure proceedings have been commenced, or for the purpose of avoiding foreclosure if the transaction is approved by the Commissioner; or

(5) Where payment in full is made within 60 days after the date the mortgage is endorsed for insurance, provided the mortgagee submits to the Commissioner a certificate signed by the mortgagor certifying that such payment was made in connection with the sale of the property to a veteran of World War II for his occupancy as a home.

(6) Where payment in full is made after the due date of the 120th scheduled monthly payment, without taking into account delinquent payments or prepayments.

(h) Upon such prepayment the contract of insurance shall terminate and the Commissioner will refund to the mortgagee for the account of the mortgagor an amount equal to the pro-rata portion of the current annual mortgage insurance premium theretofore paid which is applicable to the portion of the year subsequent to such payment, computed from the first day of the month following the month in which such prepayment occurs, provided that no such refund will be made in any case where the prepayment occurs in the twelfth month of the premium year.

§ 603.253 Forbearance of foreclosure.

With respect to any mortgage insured under this part, if the Commissioner finds that a default was due to circumstances beyond the mortgagor's control and determines that the mortgage will be restored to a current condition within a reasonable period of time, the Commissioner may approve forbearance of foreclosure relief as follows:

(a) *Uncollected interest allowance.* The mortgagee may withhold foreclosure proceedings against the mortgagor for a period of time determined by the Commissioner. If payments received from the mortgagor during the period of forbearance are insufficient to pay interest at the mortgage rate after applying such payments in the order set forth in the mortgage and the mortgage is subsequently foreclosed, the debentures may include an allowance for uncollected interest accrued during the period of such forbearance.

(b) *Assignment of defaulted mortgages.* With the prior written approval of the Commissioner, the mortgagee may assign the mortgage in exchange for debentures. As a requirement of such assignment:

(1) The mortgagee shall deliver:

(i) The original credit and security instruments assigned without recourse or warranty, except that no act or omission of the mortgagee shall have impaired the validity and priority of the mortgage;

(ii) All rights and interests arising under the mortgage, and all claims of the mortgagee against the mortgagor or others arising out of the mortgage transaction;

(iii) All title evidence held by the mortgagee, extended to include the assignment of the mortgage to the Commissioner;

(iv) All cash or property held by the mortgagee or to which it is entitled, including deposits made for the account of the mortgagor and which have not been applied in reduction of the principal mortgage indebtedness;

(v) All records, documents, books, papers and accounts relating to the mortgage transaction;

(vi) Any additional information or data which the Commissioner may require.

(2) The mortgagee shall certify that:

(i) The mortgage is prior to all mechanics' and materialmen's liens filed of record subsequent to the recording of such mortgage regardless of whether such liens attach prior to such recording date, and prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to such mortgage except such liens or other matters as may have been approved by the Commissioner;

(ii) The amount stated in the instrument of assignment is actually due and owing under the mortgage;

(iii) There are no offsets or counterclaims thereto and the mortgagee has a good right to assign.

(c) *Condition of property.* The property covered by the mortgage which is to be assigned shall meet all of the provisions of § 603.259.

§ 603.254 Voluntary termination of insurance.

Any contract of insurance meeting the requirements of this part may be voluntarily terminated in accordance with the provisions of section 229 of the Act. Voluntary terminations of insurance contracts shall be subject to the applicable provisions of Part 203 of this chapter.

§ 603.255 Insurance endorsement.

(a) Upon compliance, satisfactory to the Commissioner, with the terms of his commitment to insure, the Commissioner will endorse the original credit instrument in form as follows:

No. ------
Insured under Section 603 of
The National Housing Act
And Regulations of the
Federal Housing Commissioner
For War Housing Insurance
Dated March 31, 1941
as amended ----------
FEDERAL HOUSING COMMISSIONER
By ----------
Authorized Agent
Date ----------

(b) The mortgage shall be an insured mortgage from the date of such endorsement. The Commissioner and the mortgagee shall thereafter be bound by the regulations in this part with the same force and to the same extent as if a separate contract had been executed relating to the insured mortgage, including the provisions of the regulations in this part of the National Housing Act.

§ 603.256 Rights of parties on termination of insurance.

In the event the mortgagee forecloses on the mortgaged property, but does not convey it to the Commissioner in accordance with § 603.259 and the Commissioner is given written notice thereof, or in the event the mortgagor pays the obligation under the mortgage in full, prior to the maturity thereof, and the mortgagee pays any adjusted premium required under § 603.252(b), and the Commissioner is given written notice by the mortgagee of such payment by the mortgagor, the obligation to pay any subse-

quent premium charge for insurance shall cease and all rights of the mortgagee and mortgagor, under § 603.259, shall terminate as of the date of such notice.

§ 603.257 Time of default.

If the mortgagor fails to make any payment, or to perform any other covenant or obligation under the mortgage, and such failure continues for a period of 30 days, the mortgage shall be considered in default, and the mortgagee shall, within 60 days thereafter, give notice in writing to the Commissioner of such default and similar notices each 60 days until such default is cured.

§ 603.258 Transfer of property to the Commissioner; conditions of default in mortgage.

(a) At any time within one year from the date of default the mortgagee, at its election, shall either:

(1) With, and subject to, the consent of the Commissioner, acquire by means other than foreclosure of the mortgage, possession of, and title to, the mortgaged property; or

(2) Commence foreclosure of the mortgage: *Provided*, That if the laws of the State in which the mortgaged property is situated do not permit the commencement of such foreclosure within such period of time, the mortgagee shall commence such foreclosure within 60 days after the expiration of the time during which such foreclosure is prohibited by such laws.

(b) The mortgagee shall promptly give notice in writing to the Commissioner of the institution of foreclosure proceedings and shall exercise reasonable diligence in prosecuting such proceedings to completion.

(c) For the purposes of this section, the date of default shall be considered as 30 days after (1) the first uncorrected failure to perform a covenant or obligation, or (2) the first failure to make a monthly payment which subsequent payments by the mortgagor are insufficient to cover when applied to the overdue monthly payments in the order in which they became due: *Provided, however*, That a mortgagee may, with and subject to the written consent of the Commissioner, apply partial payments to delinquent interest at a rate not in excess of the interest rate applicable to debentures to which the mortgagee may be entitled under the provisions of § 603.259 (a) (1), to the exclusion of prior delinquent principal payments, in which event the date of default shall be 30 days after the due date of the earliest monthly payment, any part of which remains unpaid.

(d) If after default and prior to the completion of foreclosure proceedings, the mortgagor shall pay to the mortgagee all monthly payments in default and such expenses as the mortgagee shall have incurred in connection with the foreclosure proceedings, notice shall be given to the Commissioner, and the insurance shall continue as if such default had not occurred.

(e) Nothing contained in this section shall be construed so as to prevent the mortgagee, with the written consent of the Commissioner, from taking action at a later date than herein specified.

(f) If at any time during default the mortgagor is a "person in military service", as such term is defined in the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, the period during which he is in such service shall be excluded in computing the 1-year period within which the mortgagee shall commence foreclosure or acquire the property by other means as provided in this section, and no postponement or delay in the prosecution of foreclosure proceedings during the period the mortgagor is in such military service shall be construed as failure on the part of the mortgagee to exercise reasonable diligence in prosecuting such proceedings to completion as required by this section. If the mortgagor is a person in military service as defined in the Soldiers' and Sailors' Civil Relief Act of 1940, the mortgagee may, by written agreement with the mortgagor, postpone for the period of military service and 3 months thereafter, that part of the monthly payment, or any part thereof which represents amortization of principal, provided such agreement contains a provision for the resumption of monthly payments thereafter in amounts which will completely amortize the mortgage debt within its original maturity. Such agreement, however, will in no way affect the amount of the annual mortgage insurance premium which will continue to be calculated in accordance with the original amortization provisions.

(g) Nothing contained in this section shall be construed to prevent the mortgagee, with the consent of the Commissioner, from entering into a written agreement with that mortgagor postponing for a period not to exceed one year that part of the monthly payment or any part thereof which represents amortization of principal where the mortgagor is the owner of a group of properties consisting of a project of not less than ten rental units, each covered by a mortgage insured under section 603 of the National Housing Act and by the provisions of the agreement, and where the agreement obligates the mortgagor to deposit with the mortgagee the entire net income from all of the properties comprising the project, under arrangements satisfactory to the Commissioner, and obligates the mortgagor to resume monthly payments after the effective period of the agreement in such amounts as will completely amortize the mortgage indebtedness within the original maturity. Such agreement will in no way affect the amount of the annual mortgage insurance premiums, which will continue to be calculated in accordance with the original amortization provisions.

§ 603.259 Condition of property when transferred; delivery of debentures; certificate of claim and definition of the term "waste".

(a) If the default is not cured as aforesaid, and if the mortgagee has otherwise complied with the provisions of § 603.258, and at any time within thirty days (or such further time as may be necessary to complete the title examination and perfect such title) after acquiring possession of the mortgaged property by foreclosure, or by other means in accordance with § 603.258(a), the mortgagee shall either tender to the Commissioner a satisfactory conveyance of title and transfer of possession (free of occupants if the Commissioner so requires) under a deed containing a covenant which warrants against the acts of the mortgagee and all claiming by, through, or under it, or with the prior approval of the Commissioner, tender to the Commissioner a satisfactory conveyance of title and transfer of possession (free of occupants if the Commissioner so requires) under a deed or other satisfactory instrument of conveyance from the mortgagor or other appropriate grantor, such deeds or instrument of conveyance, conveying good merchantable title (evidenced as hereinafter provided in § 603.260) to such property undamaged by fire, earthquake, flood, or tornado, and undamaged by waste, except as hereinafter in this section provided, and assigns (without recourse or warranty) any and all claims which it has acquired in connection with the mortgage transaction, and as a result of the foreclosure proceedings or other means by which it acquired or tendered such property, except such claims as may have been released with the approval of the Commissioner, the Commissioner shall promptly accept conveyance of such property and such assignment and shall deliver to the mortgagee:

(1) Debentures of the War Housing Insurance Fund as set forth in section 604 of the act, issued as of the date foreclosure proceedings were instituted or the property was otherwise acquired by the mortgagee after default, bearing interest at the rate of 2½ percent per annum in the case of mortgages endorsed for insurance prior to July 8, 1953, and at the rate of 2¾ percent per annum in the case of mortgages endorsed for insurance on or after July 8, 1953, and at the rate of 2½ percent per annum if issued in exchange for property accepted for insurance pursuant to commitments issued by the Commissioner on or after May 29, 1954, payable semiannually on the first day of January and the first day of July of each year, and having a total face value equal to the value of the mortgage as defined in section 604 (a) of the act. Such value shall be determined by adding to original principal of the mortgage, which was unpaid on the date of the institution of foreclosure proceeding, or the acquisition of the property otherwise after default, the amount of all payments, which have been made by the mortgagee for taxes, ground rent, and water rates, which are liens prior to the mortgage, special assessments, which are noted on the application for insurance or which become liens after the insurance of the mortgage, insurance on the property mortgaged and any mortgage insurance premium paid after the institution of foreclosure proceedings or the acquisition of the property otherwise after default, and by deducting from such total any amount received on account of the mortgage after the institution of foreclosure proceedings or the acquisition of the property otherwise after default and from any source relating to the property or the mortgage, including any amounts received on account of the mortgage insurance premium, and any amounts received on account of the property, including any amounts received on account of fire, tornado, or other insurance, and any amounts received on account of the sale of any part of the property, and any amounts received on account of any condemnation proceedings, and any amounts received on account of any damages recovered for waste committed on the property, and any amounts received on account of any rents collected or accrued after the institution of foreclosure proceedings or the acquisition of the property otherwise after default, and any amounts received on account of any sale of the property, and any amounts received on account of any other claims which the mortgagee may have against any party liable for any amounts due under the mortgage and not covered by the amount of debentures shall determine to be sufficient to pay all liens, including any past due and unpaid ground rents, general taxes, or special assessments.

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closure proceedings or the acquisition of the property otherwise after default and from any source relating to the property on account of rent or other income after deducting reasonable expenses incurred in handling the property: *Provided, however,* That with respect to mortgages on which the unpaid principal obligation at the time of the institution of foreclosure proceedings exceeds 80 percent of the appraised value of the property as of the date the mortgage was accepted for insurance, there will be included in the debentures issued by the Commissioner, on account of the cost of foreclosure (or of acquiring the property by other means) actually paid by the mortgagee and approved by the Commissioner an amount:

(i) Not in excess of 2 percent of the unpaid principal of the mortgage as of the date of the institution of foreclosure proceedings and not in excess of $75; or

(ii) Not in excess of two-thirds of such cost, whichever is the greater. With respect to mortgages to which the provisions of sections 302 and 306 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, apply and which are insured under section 603 of the National Housing Act, there shall be included in the debentures an amount which the Commissioner finds to be sufficient to compensate the mortgagee for any loss which it may have sustained on account of interest on debentures and the payment of insurance premiums by reason of its having postponed the institution of foreclosure proceedings or the acquisition of the property by other means during any part or all of the period of such military service and three months thereafter.

Such debentures shall be registered as to principal and interest and all or any such debentures may be redeemed, at the option of the Commissioner with the approval of the Secretary of the Treasury, at par and accrued interest on any interest payment day on three months' notice of redemption given in such manner as the Commissioner shall prescribe.

(2) A certificate of claim in accordance with section 604 (e) of the act, which shall become payable, if at all, upon the sale and final liquidation of the interest of the Commissioner in such property in accordance with section 604 (f) of the act. This certificate shall be for an amount which the Commissioner shall determine to be sufficient to pay all amounts due under the mortgage and not covered by the amount of debentures and shall include a reasonable amount for necessary expenses incurred by the mortgagee in connection with the foreclosure proceedings or the acquisition of the mortgaged property otherwise and the conveyance thereof to the Commissioner, including reasonable attorney's fees, unpaid interest and cost of repairs to the property made by the mortgagee after default to remedy the waste mentioned in this section. Each such certificate of claim shall provide that there shall accrue to the holder thereof with respect to the face amount of such certificate, an increment at the rate of 3 percent per annum.

(3) In computing the face value of the debentures, in addition to the items provided in subparagraph (1) of this paragraph, there may be added to the unpaid principal of the mortgage, payments made by the mortgagee for taxes imposed upon any deed or other instrument by which said property was acquired by the mortgagee and transferred or conveyed to the Commissioner, payments made by the mortgagee, with the approval of the Commissioner, for the purpose of protecting, operating, or preserving the property.

(b) The term "waste" as used in this section means permanent or substantial injury caused by unreasonable use, or abuse, and is not intended to include damage caused by ordinary wear and tear.

(c) The provisions of this section concerning waste, shall not apply to mortgages on which the unpaid principal obligation at the time of the institution of foreclosure proceedings exceeds 75 percent of the appraised value of the property as of the date the mortgage was accepted for insurance, and in any event the obligation of the mortgagee to repair waste in accordance with such provision shall be limited to the amount of $100 for each family dwelling unit covered by the mortgage.

(d) In computing the value of the mortgage as set forth in paragraph (a)(1) of this section, the Commissioner may include in such computation the amount of payments made by the mortgagee for:

(1) Taxes imposed upon any deeds or other instruments by which said property was acquired by the mortgagee and transferred or conveyed to the Commissioner;

(2) Reasonable payments made by the mortgagee, with the approval of the Commissioner, for the purpose of protecting, operating, or preserving the property;

(3) The costs of acquiring the property by the mortgagee and conveying and evidencing title of the property to the Commissioner, may be included in the debenture computation as foreclosure costs and shall be subject to the aggregate limitation on foreclosure costs.

(e) Upon an acceptable assignment of a mortgage, the Commissioner shall issue to the mortgagee debentures having a total face value equal to the unpaid balance of the loan at the time of assignment, plus any accrued mortgage interest and any advances made under the mortgage and approved by the Commissioner.

(f) Applications for debentures with respect to mortgages insured under the provisions of this part shall be processed in accordance with the procedures under Part 203 of this chapter.

§ 603.260 Satisfactory title evidence.

(a) Evidence of title of the following types will be satisfactory to the Commissioner:

(1) A fee or owner's policy of title insurance, a guaranty or guarantee of title, or a certificate of title, issued by a title company, duly authorized by law and qualified by experience to issue such; or

(2) An abstract of title prepared by an abstract company or individual engaged in the business of preparing abstracts of title and accompanied by the legal opinion as to the quality of such title signed by an attorney at law experienced in examination of titles; or

(3) A Torrens or similar title certificate; or

(4) Evidence of title conforming to the standards of a supervising branch of the Government of the United States or of any State or Territory thereof.

(b) Such evidence of title shall be furnished without cost to the Commissioner and shall be executed as of a date to include the recordation of the deed to the Commissioner, and shall show that, according to the public records, there are not, at such date, any outstanding prior liens, including any past due and unpaid ground rents, general taxes, or special assessments.

(c) If the title and title evidence are such as to be acceptable to prudent lending institutions and leading attorneys generally in the community in which the property is situated, such title and title evidence will be satisfactory to the Commissioner and will be considered by him as good and merchantable.

(d) The Commissioner will not object to the title by reason of the following matters, provided they are not such as to impair the value of the property for residence purposes, or provided they have been brought to the attention of the insuring office for consideration in fixing the valuation:

(1) Customary easements for public utilities, party walls, driveways, and other purposes; customary building or use restrictions for breach of which there is no reversion and which have not been violated to a material extent;

(2) Such restrictions when coupled with a reversionary clause, provided there has been no violation prior to the date of the deed to the Commissioner;

(3) Slight encroachments by adjoining improvements;

(4) Outstanding oil, water, or mineral rights which, in the opinion of the Commissioner, do not impair the value of the property for residence purposes, or which are customarily waived by prudent lending institutions and leading attorneys generally in the community.

§ 603.261 Assignment of mortgages.

(a) When the insured mortgage is transferred to another approved mortgagee, such transferor and transferee shall both notify the Commissioner of such transfer within 30 days thereof, and the transferee shall thereupon succeed to all the rights and become bound by all the obligations of the transferor under the contract of insurance; and the transferor shall thereupon be released from its obligations under the contract of insurance.

(b) Whenever the insured mortgage is transferred to another approved mortgagee for the purposes of collateral only, no notice need be given to the Commissioner until such collateral is foreclosed, but the transferor shall remain subject to all the obligations of the contract of insurance.

§ 603.262 Termination of contract of insurance.

The contract of insurance shall terminate upon the happening of either of the following events:

(a) The acquisition of the insured mortgage by, or the pledge thereof to, any person, firm, or corporation, public or private, other than an approved mortgagee, whether individually or in trust for another: *Provided,* That this paragraph shall not be applicable to a mortgage acquired or held by an approved mortgagee, which is a banking institution or trust company inspected and supervised by some governmental agency, for a trust held or administered by it in a fiduciary capacity, as long as such fiduciary relationship shall remain in effect;

(b) The disposal by an approved mortgagee of any partial interest in an insured mortgage or group of insured mortgages (whether to another approved mortgagee or otherwise) by means of a declaration of trust, or by a participation or trust certificate, or by any other device: *Provided,* That this paragraph (b) shall not be applicable to any mortgage so long as it is held in a common trust fund maintained by a bank or trust company (1) exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank or trust company in its capacity as a trustee, executor or administrator; and (2) in conformity with the rules and regulations prevailing from time to time of the Board of Governors of the Federal Reserve System, pertaining to the collective investment of trust funds: *Provided further,* That this paragraph shall not be applicable to any mortgage so long as it is held in a common trust estate administered by a bank or trust company which is subject to the inspection and supervision of a governmental agency, exclusively for the benefit of other banking institutions which are subject to the inspection and supervision of a governmental agency, and which are authorized by law to acquire beneficial interests in such common trust estate, nor to any mortgage or group of mortgages transferred to such a bank or trust company as trustee exclusively for the benefit of outstanding owners of undivided interests in the trust estate, under the terms of certificates issued and sold more than 3 years prior to said transfer, by a corporation which is subject to the inspection and supervision of a governmental agency.

§ 603.263 Amendments.

The regulations in this part may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not affect the contract of insurance or any mortgage already insured, or any mortgage or prospective mortgage on which the Commissioner has made a commitment to insure.

§ 603.264 Effective date.

The regulations in this part are effective as to all mortgages on which a commitment to insure under section 603 is issued to an approved mortgagee on or after July 15, 1946. Whenever a mortgagee so desires, the provisions of this part shall become a part of any contract of insurance heretofore made. The regulations in this part are also effective as to all mortgages on which a commitment to insure under section 603 pursuant to the provisions of section 610 is issued to an approved mortgagee on or after August 19, 1947.

PART 608—MULTIFAMILY PROJECTS; WAR HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements [Obsolete]

Subpart B—Contract Rights and Obligations

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608.268 Amendments to regulations.

EFFECTIVE DATE

608.269 Effective date.

AUTHORITY: §§ 608.251 to 608.269 issued under sec. 607, 55 Stat. 61, as amended, sec. 608, 56 Stat. 303, as amended; 12 U.S.C. 1742, 1743.

Subpart A—Eligibility Requirement [Obsolete]

Subpart B—Contract Rights and Obligations

DEFINITIONS

§ 608.251 Definitions of terms used in regulations.

As used in the regulations in this part:

(a) The term "Commissioner" means the Federal Housing Commissioner.

(b) The term "act" means the National Housing Act, as amended.

(c) The term "mortgage" means such a first lien upon real estate and other property as is commonly given to secure advances (including but not being limited to advances during construction) on, or the unpaid purchase price of, real estate under the laws of the State, District or Territory in which the real estate is located, together with the credit instrument or instruments, if any, secured thereby.

(d) The term "insured mortgage" means a mortgage which has been insured by the endorsement of the Commissioner, or his duty authorized representative.

(e) The term "mortgagor" means the original borrower under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

(f) The term "mortgagee" means the original lender under a mortgage, its successors and such of its assigns as are approved by the Commissioner, and includes the holders of the credit instruments issued under a trust mortgage or deed of trust pursuant to which such holders act by and through a trustee therein named.

PREMIUMS

§ 608.252 Annual mortgage insurance premiums.

(a) The mortgagee, upon the initial endorsement of the mortgage for insurance, shall pay to the Commissioner a first mortgage insurance premium equal to one-half of one percent of the original face amount of the mortgage.

(1) If the date of the first principal payment is more than one year following the date of such initial insurance endorsement the mortgagee, upon the anniversary of such insurance date, shall pay a second premium equal to one-half of one percent of the original face amount of the mortgage.

On the date of the first principal payment the mortgagee shall pay a third premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said three

premiums shall equal the sum of (1) one percent of the average outstanding principal obligation of the

mortgage for the year following the date on which such premium becomes payable.

between the mortgagor and mortgagee voluntarily terminating the contract of

will refund to the mortgagee for the account of the mortgagor an amount equal

premiums shall equal the sum of (1) one percent of the average outstanding principal obligation of the mortgage for the year following the date of initial insurance endorsement and (2) one-half of one percent per annum of the average outstanding principal obligation of the mortgage for the period from the first anniversary of the date of initial insurance endorsement to 1 year following the date of the first principal payment.

(2) If the date of the first principal payment is 1 year or less than 1 year following the date of such initial insurance endorsement the mortgagee, upon such first principal payment date, shall pay a second premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of (1) one percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of initial insurance endorsement to the date of first principal payment and (2) one-half of one percent of the average outstanding principal obligation of the mortgage for the year following the date of the first principal payment.

(3) Where the credit instrument is initially and finally endorsed for insurance pursuant to a Commitment to Insure Upon Completion, the mortgagee on the date of the first principal payment shall pay a second premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the year following such first principal payment date which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of one-half of one percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of the insurance endorsement to 1 year following the date of the first principal payment.

(b) Until the mortgage is paid in full or until claim under the contract of insurance is made or until the contract of insurance shall terminate the mortgagee, on each anniversary of the date of the first principal payment, shall pay an annual mortgage insurance premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the year following the date on which such premium becomes payable.

(c) The premiums payable on and after the date of the first principal payment shall be calculated in accordance with the amortization provisions without taking into account delinquent payment or prepayments.

(d) Premiums shall be payable in cash or in debentures issued by the Commissioner under Title VI of the act at par plus accrued interest. All premiums are payable in advance and no refund can be made of any portion thereof except as provided in § 608.253.

§ 608.253 Adjusted premium and termination charges.

(a) All rights under the insurance contract and all obligations to pay future insurance premiums shall terminate on the following conditions:

(1) Payment to the Commissioner of an adjusted premium or termination charge computed as follows:

(i) One percent of the original face amount of the mortgage when the mortgage is prepaid in full or the contract of insurance is voluntarily terminated;

(ii) The percentage as set forth in subdivision (i) of this subparagraph applied to the difference between the original face amount of the mortgage and the aggregate face amount of a new mortgage or mortgages, if at the time of prepayment:

(*a*) The insured mortgage is paid in full with or from the proceeds of a new insured mortgage, or mortgages having an aggregate amount less than the original principal amount of the mortgage on the same property.

(*b*) The Commissioner has accepted an adjusted premium charge under an agreement providing that if new insured mortgages are placed on part or all of the property, within a period of time not to exceed one year from the date of prepayment, the adjusted premium charge previously collected will be refunded in whole or in part. In the event of the acceptance of such agreement the refund, if any, shall be computed only after the termination of the agreement or after the sale of all property or properties, whichever occurs first, and no refund shall be made prior to such computation.

(2) Notice within 30 days after prepayment in full or of a written agreement consented to by the Commissioner between the mortgagor and mortgagee voluntarily terminating the contract of insurance and

(3) Such further evidence of prepayment in full or voluntary termination and cancellation of insurance as the Commissioner may require.

(b) In no event shall the adjusted premium charge exceed the aggregate amount of premium charges which would have been payable if the mortgage had continued to be insured until maturity.

(c) No adjusted premium charge shall be due the Commissioner in the following cases:

(1) where, at the time of such prepayment, there is placed on the mortgaged property a new insured mortgage or mortgages for an amount equal to or greater than the original principal amount of the prepaid mortgage; or

(2) where the final maturity specified in the mortgage is accelerated solely by reason of partial prepayments made by the mortgagor which do not exceed in any one calendar year 15 percent of the original face amount of the mortgage; or

(3) where the final maturity specified in the mortgage is accelerated solely by reason of payments to principal to compensate for damage to the mortgaged property, including loss by condemnation or conveyance in lieu of condemnation, or a release of a part of such property, if approved by the Commissioner; or

(4) where payment in full is made of a delinquent mortgage on which foreclosure proceedings have been commenced, or for the purpose of avoiding foreclosure, if the Commissioner, in his discretion, agrees in writing to waive the payment thereof; or

(5) where, at the time of such prepayment, there is placed on the property a new insured mortgage or mortgages less than the original principal amount of the prepaid mortgage: *Provided,* That the Commissioner finds that the collection of such charge would be inequitable under the particular circumstances of the transaction; or

(6) where the mortgagor is a nonprofit mortgagor and the Commissioner approves and finds that the interest rate was substantially below the rate prevailing at the time the loan was made.

(d) At the time of prepayment or voluntary termination of the mortgage insurance contract, the Commissioner will refund to the mortgagee for the account of the mortgagor an amount equal to the pro-rata portion of the current annual mortgage insurance premium theretofore paid, which is applicable to the portion of the year subsequent to the prepayment or termination.

INSURANCE ENDORSEMENT

§ 608.254 Form of endorsement of original credit instrument.

Upon compliance satisfactory to the Commissioner with the terms and conditions of his commitment to insure, the Commissioner shall endorse the original credit instrument in form as follows:

No. _____
Insured under Section 608
Of the National Housing Act
And Regulations Threunder of the
Federal Housing Commissioner
In Effect on _____
To the Extent of Advances
Approved by the Commissioner
FEDERAL HOUSING COMMISSIONER
By _____
Authorized Agent
Date _____

§ 608.255 Contract of insurance.

The mortgage shall be an insured mortgage from the date of such endorsement. The Commissioner and the mortgagee shall thereafter be bound by the regulations in this part with the same force and to the same extent as if a separate contract had been executed relating to the insured mortgage, including the provisions of these regulations and of the National Housing Act. The term "contract of insurance" as used in this part means the agreement evidenced by such endorsement.

§ 608.256 Approval endorsement form.

(a) After all advances under the mortgage have been made with the approval of the Commissioner, the Commissioner, upon proof of compliance with any and all conditions upon which prior advances were approved for insurance, and upon presentation of the original credit instrument, will make a notation below the insurance endorsement in form as follows:

A Total Sum of $ _____
Has Been Approved for Insurance Hereunder
By the Commissioner
FEDERAL HOUSING COMMISSIONER
By _____
Authorized Agent
Date _____

(b) In cases where a commitment has been issued to insure upon completion the Commissioner will, upon full compliance with the terms of such commitment, endorse the original credit instrument for insurance by executing both certificates of the endorsement form as set forth in § 608.254 and this section.

RIGHTS AND DUTIES OF A MORTGAGEE UNDER THE CONTRACT OF INSURANCE

§ 608.257 Benefits of insurance.

The mortgagee shall be entitled to receive the benefits of the insurance, at its option, either as provided in paragraph (a) or (b) of this section.

(a) If the mortgagor fails to make any payment due under or provided to be paid by the terms of the mortgage, whether or not such failure to pay is caused by failure to perform some other covenant or obligation under the mortgage because of which the mortgagee has declared the full amount due and payable under an acceleration clause contained therein, and such failure continues for a period of 30 days, the mortgage shall be considered in default and the mortgage shall within 30 days thereafter give notice in writing to the Commissioner of such default. At any time within 30 days after the date of such notice, or within such further period as may be agreed upon by the Commissioner in writing, the mortgagee shall, in such manner as the Commissioner may require, assign, transfer, and deliver to the Commissioner the original credit instrument and the mortgage securing the same, without recourse or warranty, except that the mortgagee must warrant that no act or omission of the mortgagee has impaired the validity and priority of the mortgage, that the mortgage is prior to all mechanic's and materialmen's liens filed of record subsequent to the recording of such mortgage regardless of whether such liens attached prior to such recording date, and prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to the recording of such mortgage except such liens or other matters as may be approved by the Commissioner, that the amount stated in the instrument of assignment is actually due and owing under the mortgage, that there are no offsets or counterclaims thereto, and that the mortgagee has a good right to assign the mortgage and other items enumerated below:

(1) All rights and interest arising under the mortgage so in default;

(2) All claims of the mortgagee against the mortgagor or others, arising out of the mortgage transaction;

(3) All policies of title or other insurance or surety bonds or other guaranties, and any and all claims thereunder;

(4) Any balance of the mortgage loan not advanced to the mortgagor;

(5) Any cash or property held by the mortgagee or its agents or to which it is entitled, including deposits made for the account of the mortgagor and which have not been applied in reduction of the principal of the mortgage indebtedness; and

(6) All records, documents, books, papers, and accounts relating to the mortgage transaction.

Nothing contained in this paragraph shall be so construed as to prevent the mortgagee from taking action at a later date than herein specified, provided the Commissioner agrees thereto in writing.

The mortgagee, prior to the assignment of the mortgage to the Commissioner, shall offer evidence satisfactory to him that the original title coverage has been extended to include all advances of mortgage money made up to the date of assignment showing title satisfactory to the Commissioner as defined in § 608.260.

(b) If the mortgagor fails to make any payment to the mortgagee required by the mortgage, or to perform any other covenant or obligation under the mortgage, and such failure continues for the period of grace, if any, set forth in the mortgage, the mortgage shall be considered in default, and the mortgagee within a period of 30 days after the occurrence of a default arising on account of such failure to make any such payment or within such period after the mortgagee shall have knowledge of the occurrence of a default arising on account of such failure to perform any other covenant or obligation under the mortgage, shall give notice in writing to the Commissioner of such default. At any time within a period of 90 days after the date of such notice or within such later time as may be agreed upon by the Commissioner in writing, the mortgagee, at its election, shall either:

(1) With and subject to the consent of the Commissioner provide for transfer of title from the mortgagor or other appropriate grantor to the Commissioner or shall acquire by means other than foreclosure of the mortgage possession of and title to the mortgaged property; or

(2) Institute proceedings for the foreclosure of the mortgage and obtain possession of the mortgaged property and the income therefrom through the voluntary surrender thereof by the mortgagor or institute, and prosecute with reasonable diligence, proceedings for the appointments of a receiver of the mortgaged property and the income therefrom or proceed to exercise such other rights and remedies as may be available to it for the protection and preservation of the mortgaged property and the income therefrom under the mortgage and the law of the particular jurisdiction: *Provided*, That if the laws of the State in which the mortgaged property is situated do not permit the institution of such proceedings within such period of time, the mortgagee shall institute such proceedings within sixty (60) days after the expiration of the time during which the institution of such proceedings is prohibited by such laws. Nothing contained in this subsection shall be so construed as to require the mortgagee to take any action when the necessity therefor has been waived in writing by the Commissioner nor to prevent the mortgagee from taking action at a later date than herein specified provided the Commissioner so agrees in writing. The mortgagee shall promptly give notice in writing to the Commissioner of the institution of foreclosure proceedings under this subsection and shall exercise reasonable diligence in prosecuting such proceedings to completion. If after default and prior to the completion of foreclosure proceedings the mortgagor shall pay to the mortgagee all payments in default and such expenses as the mortgagee shall have incurred in connection with the foreclosure proceedings, notice thereof shall be given to the Commissioner by the mortgagee, and the insurance shall continue as if such default had not occurred.

§ 608.258 Computation of benefits received by assignment.

If the mortgagee elects to proceed under, and does proceed under and in accordance with, the provisions of § 608.257(a), and furnishes evidence satisfactory to the Commissioner that there are no past due and unpaid ground rents, general taxes, or special assessments, and furnishes the warranties described in said section, the Commissioner shall deliver to the mortgagee:

(a) Debentures of the War Housing Insurance Fund as set forth in section 608 of the act, issued as of the date the mortgage became in default, bearing interest from such date at the rate of 2½ percent per annum in the case of mortgages endorsed for insurance prior to July 8, 1953, and at the rate of 2¾ percent per annum in the case of mortgages endorsed for insurance on or after July 8, 1953, and at the rate of 2½ percent per annum if issued in exchange for property accepted for insurance pursuant to commitments issued by the Commissioner on or after May 29, 1954, payable semiannually on the first day of January and the first day of July of each year and having a total face value equal to the value of the mortgage as defined in section 608 (c) of the act. Such value shall be determined by adding to the original principal of the mortgage which was unpaid on the date of default the amount the mortgagee may have paid for (1) taxes, special assessments, and water rates which are liens prior to the mortgage; (2) insurance on the property; and, (3) reasonable expenses for the completion and preservation of the property and any mortgage insurance premiums paid after default; less the sum of (i) an amount equivalent to 1 percent of the unpaid amount of such principal obligation on the date of default; (ii) any amount received on account of the mortgage after such date; and (iii) any net income received by the mortgagee from the property after such date. Such debentures shall be registered as to principal and interest and all or any such debentures may be redeemed at the option of the Commissioner with the approval of the Secretary of the Treasury at par and accrued interest on any interest payment day on three months' notice of redemption given in such manner as the Commissioner shall prescribe. Such debentures shall be issued in multiples of $50 and any difference not in excess of $50 between the amount of debentures to which the mortgagee is otherwise entitled hereunder and the aggregate face value of

the debentures issued shall be paid in cash by the Commissioner to the mort-

thereof with respect to the amount of debentures shall not apply.

property under any policy of fire or other hazard insurance, and the amount of

the debentures issued shall be paid in cash by the Commissioner to the mortgagee.

(b) A Certificate of Claim in accordance with section 608 (d) of the act which shall become payable, if at all, upon the sale and final liquidation of the interest of the Commissioner in such property. This Certificate shall be for an amount which the Commissioner shall determine to be sufficient to pay all amounts due under the mortgage and not covered by the amount of debentures. Each such Certificate of Claim shall provide that there shall accrue to the holder thereof with respect to the face amount of such Certificate an increment at the rate of 3 percent per annum.

§ 608.259 Computation of benefits received by conveyance.

If the mortgagee elects to proceed under, and does proceed under and in accordance with the provisions of § 608.257(b) and at any time within 30 days (or such further time as may be allowed by the Commissioner in writing), tenders to the Commissioner possession thereof and a deed thereto containing a covenant which warrants against acts of the mortgagee and of all parties claiming by, through, or under the mortgagee, conveying title to such property satisfactory to the Commissioner, together with a Bill of Sale covering any personal property to which the mortgagee is entitled by reason of the mortgage transaction conveying title to such property satisfactory to the Commissioner, as provided in § 608.260, and assigns (without recourse or warranty) any and all claims which it has acquired in connection with the mortgage transaction and as a result of the foreclosure proceedings or other means by which it acquired such property, including but not limited to any claims on account of title insurance and fire or other hazard insurance, except such claims as may have been released with the prior approval of the Commissioner, the Commissioner shall promptly accept conveyance to such property and such assignments, notwithstanding that the buildings or improvements thereon shall be incomplete or may have been destroyed, damaged, or injured in whole or in part, and shall deliver to the mortgagee debentures and Certificate of Claim as provided in § 608.257, except that the 1 percent deduction set out in paragraph (a)(3)(i) thereof with respect to the amount of debentures shall not apply.

§ 608.260 Title in case of conveyance.

Title satisfactory to the Commissioner within the meaning of § 608.259 will be such title as was vested in the mortgagor as of the date the mortgage was filed for record, but must be free and clear of all mechanics' and materialmen's liens filed of record subsequent to the recording of such mortgage, regardless of whether such liens attached prior to such recording date, and free and clear of all liens and encumbrances which may have attached, or defects which may have arisen subsequent to the recording of such mortgage, except such liens or other matters as may be approved by the Commissioner.

§ 608.261 Evidence of title.

The mortgagee, at the time a deed is tendered in accordance with § 608.259, shall furnish to the Commissioner without expense to him satisfactory evidence of such title. Such title evidence shall be executed as of a date to include the recordation of the deed to the Commissioner and, shall be in the form of an owner's policy of title insurance, or a satisfactory abstract and attorneys' opinion covering the period subsequent to the recording of the mortgage, or a satisfactory continuation of the title evidence accepted by the Commissioner at the time the mortgage was insured, depending upon the form of title evidence originally accepted by the Commissioner.

§ 608.262 Fire and hazard insurance.

The mortgaged premises shall at all times be insured against fire and other hazards as provided in the mortgage. The duty shall be upon the mortgagee to provide such coverage in the event the mortgagor fails to do so. If the mortgagee fails to pay any premiums necessary to keep the mortgaged premises so insured, the contract of insurance may be terminated at the election of the Commissioner. If at the time claim is filed for debentures the property has been damaged by fire or other hazards and loss has been sustained by reason of failure to keep the property insured as provided in the mortgage, the amount of such loss may be deducted from the amount of the debentures. In the event a loss has occurred to the mortgaged property under any policy of fire or other hazard insurance and the amount of any funds received by the mortgagee in payment of such loss shall be sufficient to pay in full the entire mortgage indebtedness, the mortgage shall, upon receipt of such funds by the mortgagee, be deemed paid and the contract of mortgage insurance made with the Commissioner shall thereupon terminate. If, however, any funds so received shall be insufficient to pay such mortgage indebtedness in full the mortgagee shall not exercise its option under the mortgage to use the proceeds of such insurance for the repairing, replacing or rebuilding of such premises or to apply such proceeds to the mortgage indebtedness without prior written approval of the Commissioner. If the Commissioner shall fail to give his approval to the use or application of such funds for either of said purposes within 30 days after written request by the mortgagee, the mortgagee may use or apply such funds for any of the purposes specified in the mortgage without the approval of the Commissioner.

§ 608.263 Mortgage default or prepayment.

If after the mortgage becomes in default, as provided in § 608.257, the mortgagee does not make the assignment provided in § 608.257(a), or does not foreclose or otherwise acquire the mortgaged property and make the conveyance provided in § 608.259, and written notice thereof is given to the Commissioner; or in the event that the mortgagor pays the obligation under the mortgage in full prior to the maturity thereof and the mortgagee pays the adjusted premium charge required under the provisions of § 608.253 of the regulations in this part and written notice thereof is given to the Commissioner, the obligation to pay the annual premium charge shall cease, and all rights of the mortgagee and the mortgagor under §§ 608.258 and 608.259 shall terminate as of the date of such notice.

§ 608.264 Termination of contract of insurance.

In the event that the mortgagee fails to comply with the provisions of §§ 608.255(a) and 608.258, or §§ 608.257 (b) and 608.259, then the contract of insurance shall thereupon terminate.

ASSIGNMENTS

§ 608.265 In general.

(a) Bonds or other obligations issued in connection with an insured mortgage executed in the form of an indenture of trust providing for the issue and sale of such bonds or other obligations and appointing a trustee to act on behalf of the holders of such bonds or other obligations may be transferred as provided in the indenture of trust.

(b) An insured mortgage, other than a mortgage executed in the form of an indenture of trust providing for the issue and sale of bonds or other obligations and appointing a trustee to act on behalf of the holders of such bonds or other obligations, may be transferred (but, except with the written approval of the Commissioner, only subsequent to full disbursement of the mortgage loan) to a transferee who is a mortgagee approved by the Commissioner. Upon such approval and transfer and the assumption by the transferee of all obligations under the contract of insurance, the transferor shall be released from its obligations under the contract of insurance.

§ 608.266 Termination of contract of mortgage insurance by assignment.

The contract of insurance shall terminate with respect to mortgages described in § 608.265(b) upon the happening of either of the following events:

(a) The acquisition of the insured mortgage by or the pledge thereof to any person, firm, or corporation, public or private, except as specifically provided in § 608.265(b).

(b) The disposal by a mortgagee of any partial interest in the insured mortgage by means of a declaration of trust or by a participation or trust certificate or by any other device unless with the prior written approval of the Commissioner: *Provided,* That this paragraph (b) shall not be applicable to any mortgage so long as it is held in a common trust fund maintained by a bank or trust company (1) exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank or trust company in its capacity as a trustee, executor or administrator; and (2) in conformity with the rules and regulations prevailing from time to time of the Board of Governors of the Federal

Reserve System, pertaining to the collective investment of trust funds: *Provided further,* That this paragraph (b) shall not be applicable to any mortgage so long as it is held in a common trust estate administered by a bank or trust company which is subject to the inspection and supervision of a governmental agency, exclusively for the benefit of other banking institutions which are subject to the inspection and supervision of a governmental agency, and which are authorized by law to acquire beneficial interests in such common trust estate, nor to any mortgage transferred to such a bank or trust company as trustee exclusively for the benefit of outstanding owners of undivided interests in the trust estate, under the terms of certificates issued and sold more than 3 years prior to said transfer, by a corporation which is subject to the inspection and supervision of a governmental agency.

RIGHTS IN HOUSING FUND

§ 608.267 No vested right.

Neither the mortgagee nor the mortgagor shall have any vested or other right in the "War Housing Insurance Fund."

AMENDMENTS

§ 608.268 Amendments to regulations.

The regulations in this part may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not affect the contract of insurance on any mortgage already insured or any mortgage or prospective mortgage on which the Commissioner has made a commitment to insure.

EFFECTIVE DATE

§ 608.269 Effective date.

The regulations in this part shall be effective as to all mortgages with respect to which a commitment to insure under section 608 is issued on or after August 15, 1946. The regulations in this part are also effective as to all mortgages on which a commitment to insure under section 608, pursuant to the provisions of section 610, is issued on or after August 19, 1947.

PART 611—SINGLE FAMILY PROJECT LOANS; WAR HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements [Obsolete]

Subpart B—Contract Rights and Obligations

DEFINITIONS

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611.251 Definitions of terms used in this part.

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611.257 Rights and duties in connection with project mortgage.
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ASSIGNMENTS

611.259 Assignment of project mortgages.
611.260 Assignment of individual mortgages.

RIGHTS IN HOUSING FUND

611.261 No vested right.

AMENDMENTS

611.262 Amendments to regulations in this part.

EFFECTIVE DATE

611.263 Effective date.

AUTHORITY: §§ 611.251 to 611.263 issued under sec. 607, 55 Stat. 61, as amended; sec. 611, 62 Stat. 1271, as amended; 12 U.S.C. 1742, 1746.

Subpart A—Eligibility Requirements [Obsolete]

Subpart B—Contract Rights and Obligations

DEFINITIONS

§ 611.251 Definitions of terms used in this part.

As used in the regulations in this part:

(a) The term "Commissioner" means the Federal Housing Commissioner.

(b) The term "act" means the National Housing Act, as amended.

(c) The term "mortgage" means such a first lien upon real estate and other property as is commonly given to secure advances (including but not being limited to advances during construction) on, or the unpaid purchase price of, real estate under the laws of the State, district or territory in which the real estate is located, together with the credit instrument or instruments, if any, secured thereby.

(d) The term "insured mortgage" means a mortgage which has been insured by the endorsement of the Commissioner, or his duly authorized representative.

(e) The term "mortgagor" means the original borrower under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

(f) The term "mortgagee" means the original lender under a mortgage, its successors and such of its assigns as are approved by the Commissioner, and includes the holders of the credit instruments issued under a trust mortgage or deed of trust pursuant to which such holders act by and through a trustee therein named.

(g) The term "project mortgage" means a blanket mortgage which at the time of insurance covers a group of not less than 25 single-family dwellings.

(h) The term "individual mortgage" means a mortgage covering a single-family dwelling released from a project mortgage insured under section 611 of the act.

PREMIUMS

§ 611.252 Insurance premiums for project mortgages.

(a) The mortgagee, upon the initial endorsement of the mortgage for insurance, shall pay to the Commissioner a first mortgage insurance premium equal to one-half of one percent of the original face amount of the mortgage.

(1) If the date of the first principal payment is more than one year following the date of such initial insurance endorsement the mortgagee, upon the anniversary of such insurance date, shall pay a second premium equal to ½ of 1 percent of the original face amount of the mortgage. On the date of the first principal payment the mortgagee shall pay a third premium equal to ½ of 1

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percent of the average outstanding principal obligation of the mortgage for the

gagee, on each anniversary of the date of the first principal payment, shall pay an

account of the initial mortgage insurance premium which payment shall be in

(2) Where the final maturity specified in the mortgage is accelerated solely by

percent of the average outstanding principal obligation of the mortgage for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said three premiums shall equal the sum of (i) 1 percent of the average outstanding principal obligation of the mortgage for the year following the date of initial insurance endorsement and (ii) ½ of 1 percent per annum of the average outstanding principal obligation of the mortgage for the period from the first anniversary of the date of initial insurance endorsement to one year following the date of the first principal payment.

(2) If the date of the first principal payment is one year or less than one year following the date of such initial insurance endorsement the mortgagee, upon such first principal payment date, shall pay a second premium equal to ½ of 1 percent of the average outstanding principal obligation of the mortgage for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of (i) 1 percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of initial insurance endorsement to the date of first principal payment and (ii) ½ of 1 percent of the average outstanding principal obligation of the mortgage for the year following the date of the first principal payment.

(3) Where the credit instrument is initially and finally endorsed for insurance pursuant to a commitment to insure upon completion, the mortgagee on the date of the first principal payment shall pay a second premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the year following such first principal payment date which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of ½ of 1 percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of the insurance endorsement to one year following the date of the first principal payment.

(b) Until the mortgage is paid in full or until claim under the contract of insurance is made or until the contract of insurance shall terminate, the mortgagee, on each anniversary of the date of the first principal payment, shall pay an annual mortgage insurance premium equal to ½ of 1 percent of the average outstanding principal obligation of the mortgage for the year following the date on which such premium becomes payable.

(c) The premiums payable on and after the date of the first principal payment shall be calculated in accordance with the amortization provisions without taking into account delinquent payments or prepayments.

(d) Premiums shall be payable in cash or in debentures issued by the Commissioner under Title VI of the act at par plus accrued interest. All premiums are payable in advance and no refund can be made of any portion thereof except as hereinafter provided in paragraph (e) of this section.

(e) In the event that the principal obligation of any mortgage accepted for insurance is paid in full prior to maturity, the mortgagee shall within 30 days thereafter notify the Commissioner of the date of prepayment. Upon such prepayment the contract of insurance shall terminate and the Commissioner will refund to the mortgagee for the account of the mortgagor an amount equal to the pro rata portion of the current annual mortgage insurance premium theretofore paid, which is applicable to the portion of the year subsequent to such prepayment.

§ 611.253 Insurance premiums for individual mortgages.

(a) The mortgagee shall pay to the Commissioner, either in cash or debentures issued under Title VI of the National Housing Act at par plus accrued interest, mortgage insurance premiums in accordance with paragraphs (b) and (c) of this section which shall be calculated in accordance with the amortization provisions of the mortgage, without taking into account delinquent payments or prepayments.

(b) The initial mortgage insurance premium shall be paid on the date on which the insurance becomes effective by endorsement and shall cover the period beginning with the date of insurance endorsement and ending one year after the beginning of amortization. Regardless of whether such period is more or less than one year, a payment shall be made to the Commissioner on account of the initial mortgage insurance premium which payment shall be in an amount equal to ½ percent of the average outstanding principal obligation for the first year of amortization under the mortgage. If such payment is less than the minimum premium or more than the maximum premium prescribed by the act, the initial mortgage insurance premium shall be in the minimum amount prescribed by the act, and the amount of the second premium payment shall be adjusted accordingly; but if such payment is within the limitations prescribed by the act, no adjustment shall be made and the amount of the payment shall be retained by the Commissioner as the initial mortgage insurance premium.

(c) After the payment of the initial mortgage insurance premium and until the mortgage is paid in full or the mortgaged property is acquired by the Commissioner, or until the contract of insurance is otherwise terminated, the mortgagee shall continue to pay annual mortgage insurance premiums to the Commissioner. Such annual premium shall be paid on the anniversary date of the beginning of amortization and shall be in an amount equal to ½ percent of the average outstanding principal obligation for the 12-month period following the date on which the premium becomes payable.

(d) For the purpose of this section the term "beginning of amortization" shall mean the date one month prior to the date of the first monthly payment.

§ 611.254 Adjusted premium charge for individual mortgages.

(a) In the event that the principal obligation of any mortgage accepted for insurance is paid in full prior to maturity, the mortgagee shall within 30 days thereafter notify the Commissioner of the date of prepayment and shall pay to the Commissioner an adjusted premium charge of 1 percent of the original principal amount of the prepaid mortgage.

(b) In no event shall the adjusted premium exceed the aggregate amount of premium charges which would have been payable if the mortgage had continued to be insured until maturity.

(c) No adjusted premium shall be due or payable in the following cases:

(1) Where at the time of such prepayment there is placed on the mortgaged property a new insured mortgage;

(2) Where the final maturity specified in the mortgage is accelerated solely by reason of partial prepayments made by the mortgagor which do not exceed in any one calendar year 15 percent of the original face amount of the mortgage; or by reason of partial prepayments made by the mortgagor in excess of 15 percent made during the period from May 27, 1941 through June 30, 1952;

(3) Where the final maturity specified in the mortgage is accelerated solely by reason of payments to principal to compensate for:

(i) Damage to the mortgaged property;

(ii) The conveyance of the mortgaged property pursuant to condemnation proceedings or in lieu of condemnation proceedings; or

(iii) A release of a part of such property if approved by the Commissioner;

(4) Where payment in full is made pursuant to a court order or of a delinquent mortgage on which foreclosure proceedings have been commenced, or for the purpose of avoiding foreclosure if the transaction is approved by the Commissioner; or

(5) Where payment in full is made within 60 days after the date the mortgage is endorsed for insurance, provided the mortgagee submits to the Commissioner a certificate signed by the mortgagor certifying that such payment was made in connection with the sale of the property to a veteran of World War II for his occupancy as a home.

(d) Upon such prepayment the contract of insurance shall terminate and the Commissioner will refund to the mortgagee for the account of the mortgagor an amount equal to the pro-rata portion of the current annual mortgage insurance premium theretofore paid which is applicable to the portion of the year subsequent to such payment, computed from the first day of the month following the month in which such prepayment occurs, provided that no such refund will be made in any case where the prepayment occurs in the twelfth month of the premium year.

INSURANCE ENDORSEMENT

§ 611.255 Endorsement of project mortgage.

(a) Upon compliance satisfactory to the Commissioner with the terms and conditions of his commitment to insure,

the Commissioner shall endorse the original credit instrnment in form as follows:

No. --------
Insured under section 611
Of the National Housing Act
and Regulations thereunder of the
Federal Housing Commissioner
In effect on ----------
to the extent of advances
approved by the Commissioner
FEDERAL HOUSING COMMISSIONER
By----------
Authorized agent
Date ----------

(b) The mortgage shall be an insured mortgage from the date of such endorsement. The Commissioner and the mortgagee shall thereafter be bound by the regulations in this part with the same force and to the same extent as if a separate contract had been executed relating to the insured project mortgage, including the provisions of the regulations in this part and of the National Housing Act. The term "contract of insurance" as used in this part, means the agreement evidenced by such endorsement.

(c) After all advances under the mortgage have been made with the approval of the Commissioner, the Commissioner, upon proof of compliance with any and all conditions upon which prior advances were approved for insurance, and upon presentation of the original credit instrument, will make a notation below the insurance endorsement in form as follows:

A total sum of $--------
has been approved for insurance hereunder
By the Commissioner
FEDERAL HOUSING COMMISSIONER
By ----------
Authorized agent
Date ----------

(d) In cases where a commitment has been issued to insure upon completion the Commissioner will, upon full compliance with the terms of such commitment, endorse the original credit instrument for insurance by executing both certificates of the endorsement form as set forth in paragraphs (a) and (c) of this section.

§ 611.256 Endorsement of individual mortgage.

(a) Upon compliance, satisfactory to the Commissioner, with the terms of his commitment to insure, the Commissioner will endorse the original credit instrument in form as follows:

No. --------
Insured as an individual mortgage under section 611
of the National Housing Act
and regulations thereunder of the
Federal Housing Commisisoner
Revised ----------, 1950
as amended ----------
FEDERAL HOUSING COMMISSIONER
By ----------
Authorized agent
Date ----------

(b) The mortgage shall be an insured mortgage from the date of such endorsement. The Commissioner and the mortgagee shall thereafter be bound by the regulations in this part with the same force and to the same extent as if a separate contract had been executed relating to the insured individual mortgage, including the provisions of the regulations in this part and of the National Housing Act.

RIGHTS AND DUTIES OF A MORTGAGEE UNDER CONTRACT OF INSURANCE

§ 611.257 Rights and duties in connection with project mortgage.

The mortgagee shall be entitled to receive the benefits of the insurance, at its option, either as provided in paragraph (a) or paragraph (b) of this section.

(a) If the mortgagor fails to make any payment due under or provided to be paid by the terms of the mortgage, whether or not such failure to pay is caused by failure to perform some other covenant or obligation under the mortgage because of which the mortgagee has declared the full amount due and payable under an acceleration clause contained therein, and such failure continues for a period of 30 days, the mortgage shall be considered in default and the mortgagee shall within 30 days thereafter give notice in writing to the Commissioner of such default. At any time within 30 days after the date of such notice, or within such further period as may be agreed upon by the Commissioner in writing, the mortgagee shall, in such manner as the Commissioner may require, assign, transfer, and deliver to the Commissioner the original credit instrument and the mortgage securing the same, without recourse or warranty, except that the mortgagee must warrant that no act or omission of the mortgagee has impaired the validity and priority of the mortgage, that the mortgage is prior to all mechanics' and materialmen's liens filed of record subsequent to the recording of such mortgage regardless of whether such liens attached prior to such recording date, and prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to the recording of such mortgage except such liens or other matters as may be approved by the Commissioner, that the amount stated in the instrument of assignment is actually due and owing under the mortgage, that there are no offsets or counterclaims thereto, and that the mortgagee has a good right to assign and shall assign to the Commissioner the mortgage and other items enumerated below:

(1) All rights and interests arising under the mortgage so in default;

(2) All claims of the mortgagee against the mortgagor or others, arising out of the mortgage transaction;

(3) All policies of title or other insurance or surety bonds or other guaranties, and any and all claims thereunder;

(4) Any balance of the mortgage loan not advanced to the mortgagor;

(5) Any cash or property held by the mortgagee or its agents or to which it is entitled, including deposits made for the account of the mortgagor and which have not been applied in reduction of the principal of the mortgage indebtedness; and

(6) All records, documents, books, papers, and accounts relating to the mortgage transaction.

The mortgagee shall offer evidence satisfactory to the Commissioner that the original title coverage has been extended to include the assignment of the mortgage to the Commissioner.

Nothing contained in this section shall be so construed as to prevent the mortgagee from taking action at a later date than herein specified, provided the Commissioner agrees thereto in writing.

(b) If the mortgagor fails to make any payment to the mortgagee required by the mortgagee, or to perform any other covenant or obligation under the mortgage, and such failure continues for the period of grace, if any, set forth in the mortgage, the mortgage shall be considered in default, and the mortgagee, within a period of 30 days after the occurrence of a default arising on account of such failure to make any such payment or within such period after the mortgagee shall have knowledge of the occurrence of a default arising on account of such failure to perform any other covenant or obligation under the mortgage, shall give notice in writing to the Commissioner of such default. At any time within a period of 90 days after the date of such notice or within such later time as may be agreed upon by the Commissioner in writing, the mortgagee, at its election, shall either:

(1) With, and subject to, the consent of the Commissioner, acquire by means other than foreclosure of the mortgage, possession of, and title to, the mortgaged property; or

(2) Institute proceedings for the foreclosure of the mortgage and obtain possession of the mortgaged property and the income therefrom through the voluntary surrender thereof by the mortgagor or institute, and prosecute with reasonable diligence, proceedings for the appointment of a receiver of the mortgaged property and the income therefrom or proceed to exercise such other rights and remedies as may be available to it for the protection and preservation of the mortgaged property and the income therefrom under the mortgage and the law of the particular jurisdiction: *Provided*, That if the laws of the State in which the mortgaged property is situated do not permit the institution of such proceedings within such period of time, the mortgagee shall institute such proceedings within 60 days after the expiration of the time during which the institution of such proceedings is prohibited by such laws. Nothing contained in this section shall be so construed as to require the mortgagee to take any action when the necessity therefor has been waived in writing by the Commissioner nor to prevent the mortgagee from taking action at a later date than herein specified provided the Commissioner so agrees in writing. The mortgagee shall promptly give notice in writing to the Commissioner of the institution of foreclosure proceedings under this section and shall exercise reasonable diligence in prosecuting such proceedings to completion. If after default and prior to the completion of foreclosure proceedings the mortgagor shall pay to the mortgagee all payments in default and such expenses as the mortgagee shall have in-

curred in connection with the foreclosure proceedings, notice thereof shall be given to the Commissioner by the mortgagee, and the insurance shall continue as if such default had not occurred.

(c) If the mortgagee elects to proceed under, and does proceed under and in accordance with, the provisions of paragraph (a) of this section, and furnishes evidence satisfactory to the Commissioner that there are no past due and unpaid ground rents, general taxes, or special assessments, and furnishes the warranties described in said paragraph, the Commissioner shall deliver to the mortgagee:

(1) Debentures of the War Housing Insurance Fund as set forth in section 608 of the act, issued as of the date the mortgage became in default, bearing interest from such date at the rate of 2½ percent per annum in the case of mortgages endorsed for insurance prior to July 8, 1953, and at the rate of 2¾ percent per annum in the case of mortgages endorsed for insurance on or after July 8, 1953, and at the rate of 2½ percent per annum if issued in exchange for property accepted for insurance pursuant to commitments issued by the Commissioner on or after May 29, 1954, payable semi-annually on the first day of January and the first day of July of each year and having a total face value equal to the value of the mortgage as defined in section 608 (c) of the act. Such value shall be determined by adding to the original principal of the mortgage which was unpaid on the date of default the amount the mortgagee may have paid for taxes, special assessments, and water rates which are liens prior to the mortgage; insurance on the property; and reasonable expenses for the completion and preservation of the property and any mortgage insurance premiums paid after default; less the sum of (i) an amount equivalent to one percent of the unpaid amount of such principal obligation on the date of default; (ii) any amount received on account of the mortgage after such date; and (iii) any net income received by the mortgagee from the property after such date. Such debentures shall be registered as to principal and interest and all or any such debentures may be redeemed at the option of the Commissioner with the approval of the Secretary of the Treasury at par and accrued interest on any interest payment day on three months' notice of redemption given in such manner as the Commissioner shall prescribe. Such debentures shall be issued in multiples of $50 and any difference not in excess of $50 between the amount of debentures to which the mortgagee is otherwise entitled hereunder and the aggregate face value of the debentures issued shall be paid in cash by the Commissioner to the mortgagee.

(2) A Certificate of Claim in accordance with section 608 (d) of the act which shall become payable, if at all, upon the sale and final liquidation of the interest of the Commissioner in such property. This Certificate shall be for an amount which the Commissioner shall determine to be sufficient to pay all amounts due under the mortgage and not covered by the amount of debentures. Each such Certificate of Claim shall provide that there shall accrue to the holder thereof with respect to the face amount of such Certificate an increment at the rate of three percent per annum.

(d) If the mortgagee elects to proceed under, and does proceed under and in accordance with the provisions of paragraph (b) of this section and at any time within 30 days (or such further time as may be allowed by the Commissioner in writing) after acquiring title to and possession of the mortgaged property in accordance with such paragraph, tenders to the Commissioner possession thereof and a deed thereto containing a covenant which warrants against acts of the mortgagee and of all parties claiming by, through, or under the mortgagee, conveying title to such property satisfactory to the Commissioner, as provided in paragraph (e) of this section, and assigns (without recourse or warranty) any and all claims which it has acquired in connection with the mortgage transaction and as a result of the foreclosure proceedings or other means by which it acquired such property, including but not limited to any claims on account of title insurance and fire or other hazard insurance, except such claims as may have been released with the prior approval of the Commissioner, the Commissioner shall promptly accept conveyance to such property and such assignments, notwithstanding that the buildings or improvements thereon shall be incomplete or may have been destroyed, damaged, or injured in whole or in part, and shall deliver to the mortgagee debentures and Certificate of Claim as provided in paragraph (c) of this section, except that the one percent deduction set out in subparagraph (1) (i) thereof with respect to the amount of debentures shall not apply.

(e) Title satisfactory to the Commissioner within the meaning of paragraph (d) of this section will be such title as was vested in the mortgagor as of the date the mortgage was filed for record, but must be free and clear of all mechanics' and materialmen's liens filed of record subsequent to the recording of such mortgage, regardless of whether such liens attached prior to such recording date, and free and clear of all liens and encumbrances which may have attached, or defects which may have arisen subsequent to the recording of such mortgage, except such liens or other matters as may be approved by the Commissioner.

(f) The mortgagee, at the time a deed is tendered in accordance with paragraph (d) of this section, shall furnish to the Commissioner without expense to him satisfactory evidence of such title. Such title evidence shall be executed as of a date to include the recordation of the deed to the Commissioner and, shall be in the form of an owner's policy of title insurance, or a satisfactory abstract and attorney's opinion covering the period subsequent to the recording of the mortgage, or a satisfactory continuation of the title evidence accepted by the Commissioner at the time the mortgage was insured, depending upon the form of title evidence originally accepted by the Commissioner.

(g) The mortgaged premises shall at all times be insured against fire and other hazards as provided in the mortgage. The duty shall be upon the mortgagee to provide such coverage in the event the mortgagor fails to do so. If the mortgagee fails to pay any premiums necessary to keep the mortgaged premises so insured, the contract of insurance may be terminated at the election of the Commissioner. If at the time claim is filed for debentures the property has been damaged by fire or other hazards and loss has been sustained by reason of failure to keep the property insured as provided in the mortgage, the amount of such loss may be deducted from the amount of the debentures. In the event a loss has occurred to the mortgaged property under any policy of fire or other hazard insurance and the amount of any funds received by the mortgagee in payment of such loss shall be sufficient to pay in full the entire mortgage indebtedness, the mortgage shall, upon receipt of such funds by the mortgagee, be deemed paid and the contract of mortgage insurance made with the Commissioner shall thereupon terminate. If, however, any funds so received shall be insufficient to pay such mortgage indebtedness in full, the mortgagee shall not exercise its option under the mortgage to use the proceeds of such insurance for the repairing, replacing or rebuilding of such premises or to apply such proceeds to the mortgage indebtedness without prior written approval of the Commissioner. If the Commissioner shall fail to give his approval to the use or application of such funds for either of said purposes within 30 days after written request by the mortgagee, the mortgagee may use or apply such funds for any of the purposes specified in the mortgage without the approval of the Commissioner.

(h) In the event the mortgagee forecloses on the mortgaged property, but does not convey it to the Commissioner in accordance with paragraph (d) of this section, and the Commissioner is given written notice thereof, or in the event the mortgagor pays the obligation under the mortgage in full, prior to the maturity thereof, and the Commissioner is given written notice by the mortgagee of such payment by the mortgagor, the obligation to pay any subsequent premium charge for insurance shall cease and all rights of the mortgagee, under paragraph (d) of this section, shall terminate as of the date of such notice.

§ 611.258 Rights and duties in connection with individual mortgage.

(a) In the event the mortgagee forecloses on the mortgaged property, but does not convey it to the Commissioner in accordance with paragraph (g) of this section, and the Commissioner is given written notice thereof, or in the event the mortgagor pays the obligation under the mortgage in full, prior to the maturity thereof, and the mortgagee pays any adjusted premium required under § 611.254, and the Commissioner is given written notice by the mortgagee of such payment by the mortgagor, the obligation to

pay any subsequent premium charge for insurance shall cease and all rights of the mortgagee and mortgagor, under paragraph (g) of this section, shall terminate as of the date of such notice.

(b) If the mortgagor fails to make any payment, or to perform any other covenant or obligation under the mortgage, and such failure continues for a period of 30 days, the mortgage shall be considered in default, and the mortgagee shall, within 60 days thereafter, give notice in writing to the Commissioner of such default, unless such default has been cured or unless the Commissioner has been notified of a previous default which remains uncured.

(c) At any time within one year from the date of default the mortgagee, at its election, shall either:

(1) With, and subject to, the consent of the Commissioner, acquire by means other than foreclosure of the mortgage, possession of, and title to, the mortgaged property; or

(2) Commence foreclosure of the mortgage: *Provided*, That if the laws of the State in which the mortgaged property is situated do not permit the commencement of such foreclosure within such period of time, the mortgagee shall commence such foreclosure within 60 days after the expiration of the time during which such foreclosure is prohibited by such laws.

(d) The mortgagee shall promptly give notice in writing to the Commissioner of the institution of foreclosure proceedings and shall exercise reasonable diligence in prosecuting such proceedings to completion.

(e) For the purposes of this section, the date of default shall be considered as 30 days after the first uncorrected failure to perform a covenant or obligation, or the first failure to make a monthly payment which subsequent payments by the mortgagor are insufficient to cover when applied to the overdue monthly payments in order in which they became due.

(f) If after default and prior to the completion of foreclosure proceedings, the mortgagor shall pay to the mortgagee all monthly payments in default and such expenses as the mortgagee shall have incurred in connection with the foreclosure proceedings, notice shall be given to the Commissioner, and the insurance shall continue as if such default had not occurred. Nothing contained in this section shall be construed so as to prevent the mortgagee, with the written consent of the Commissioner, from taking action at a later date than herein specified.

(g) If the default is not cured as aforesaid, and if the mortgagee has otherwise complied with the provisions of paragraph (c) of this section, and at any time within 30 days (or such further time as may be necessary to complete the title examination and perfect such title) after acquiring possession of the mortgaged property by foreclosure, or by other means in accordance with paragraph (c) (1) of this section, tenders to the Commissioner possession of, and a deed containing a covenant which warrants against the acts of the mortgagee and all claiming by, through, or under it, conveying good merchantable title (evidenced as hereinafter provided in paragraph (j) of this section to such property undamaged by fire, earthquake, flood, or tornado, and undamaged by waste, except as hereinafter in this section provided, and assigns (without recourse or warranty) any and all claims which it has acquired in connection with the mortgage transaction, and as a result of the foreclosure proceedings or other means by which it acquired such property, except such claims as may have been released with the approval of the Commissioner, the Commissioner shall promptly accept conveyance of such property and such assignment and shall deliver to the mortgagee:

(1) Debentures of the War Housing Insurance Fund as set forth in section 604 of the act, issued as of the date foreclosure proceedings were instituted or the property was otherwise acquired by the mortgagee after default, bearing interest at the rate of 2½ percent per annum in the case of mortgages endorsed for insurance prior to July 8, 1953, and at the rate of 2¾ percent per annum in the case of mortgages endorsed for insurance on or after July 8, 1953, and at the rate of 2½ percent per annum if issued in exchange for property accepted for insurance pursuant to commitments issued by the Commissioner on or after May 29, 1954, payable semi-annually on the first day of January and the first day of July of each year, and having a total face value equal to the value of the mortgage as defined in section 604 (a) of the act. Such value shall be determined by adding to original principal of the mortgage, which was unpaid on the date of the institution of foreclosure proceedings or the acquisition of the property otherwise after default, the amount of all payments, which have been made by the mortgagee for taxes, ground rent and water rates, which are liens prior to the mortgage, special assessments, which are noted on the application for insurance or which become liens after the insurance of the mortgage, insurance on the property mortgaged and any mortgage insurance premium paid after the institution of foreclosure proceedings or the acquisition of the property otherwise after default, and by deducting from such total any amount received on account of the mortgage after the institution of foreclosure proceedings or the acquisition of the property otherwise after default and from any source relating to the property on account of rent or other income after deducting reasonable expenses incurred in handling the property: *Provided, however*, That with respect to mortgages on which the unpaid principal obligation at the time of the institution of foreclosure proceedings exceeds 80 percent of the release clause price as specified in the blanket mortgage applicable to the mortgaged property, or 80 percent of the appraised value as of the date the mortgage was accepted for insurance if a valuation was made at the time of insurance, there will be included in the debentures issued by the Commissioner, on account of the cost of foreclosure (or of acquiring the property by other means) actually paid by the mortgagee and approved by the Commissioner an amount not in excess of 2 percent of the unpaid principal of the mortgage as of the date of institution of foreclosure proceedings and not in excess of $75; or not in excess of two-thirds of such cost, whichever is the greater. Such debentures shall be registered as to principal and interest and all or any such debentures may be redeemed, at the option of the Commissioner with the approval of the Secretary of the Treasury, at par and accrued interest on any interest payment day on three months' notice of redemption given in such manner as the Commissioner shall prescribe.

(2) A Certificate of Claim in accordance with section 604 (e) of the act, which shall become payable, if at all, upon the sale and final liquidation of the interest of the Commissioner in such property in accordance with section 604 (f) of the act. This certificate shall be for an amount which the Commissioner shall determine to be sufficient to pay all amounts due under the mortgage and not covered by the amount of debentures and shall include a reasonable amount for necessary expenses incurred by the mortgagee in connection with the foreclosure proceedings or the acquisition of the mortgaged property otherwise and the conveyance thereof to the Commissioner, including reasonable attorney's fees, unpaid interest and cost of repairs to the property made by the mortgagee after default to remedy the waste mentioned in this section. Each such Certificate of Claim shall provide that there shall accrue to the holder thereof with respect to the face amount of such certificate, an increment at the rate of 3 percent per annum.

(h) The term "waste" as used in this section means permanent or substantial injury caused by unreasonable use, or abuse, and is not intended to include damage caused by ordinary wear and tear.

(i) The provisions of this section concerning waste shall not apply to mortgages on which the unpaid principal obligation at the time of the institution of foreclosure proceedings exceeds 75 percent of the release clause price as specified in the mortgage applicable to the mortgaged property, or in the event a valuation was made at the time the individual mortgage was accepted for insurance, 75 percent of such appraised value; and in any event the obligation of the mortgagee to repair waste in accordance with such provision shall be limited to the amount of $100 for each family dwelling unit covered by the mortgage.

(j) Evidence of title of the following types will be satisfactory to the Commissioner:

(1) A fee or owner's policy of title insurance, a guaranty or guarantee of title, or a certificate of title, issued by a title company, duly authorized by law and qualified by experience to issue such; or

(2) An abstract of title prepared by an abstract company or individual engaged in the business of preparing abstracts of title and accompanied by the legal opinion as to the quality of such

had not occurred. Nothing contained in section 604 (a) of the act. Such value which shall become payable, if at all,

title signed by an attorney at law experienced in examination of titles; or

(3) A Torrens or similar title certificate; or

(4) Evidence of title conforming to the standards of a supervising branch of the Government of the United States or of any State or Territory thereof.

(k) Such evidence of title shall be furnished without cost to the Commissioner and shall be executed as of a date to include the recordation of the deed to the Commissioner, and shall show that, according to the public records, there are not, at such date, any outstanding prior liens, including any past due and unpaid ground rents, general taxes, or special assessments.

(l) If the title and title evidence are such as to be acceptable to prudent lending institutions and leading attorneys generally in the community in which the property is situated, such title and title evidence will be satisfactory to the Commissioner and will be considered by him as good and merchantable.

(m) The Commissioner will not object to the title by reason of the following matters, provided they are not such as to impair the value of the property for residence purposes, or provided they have been brought to the attention of the insuring office for consideration in fixing the valuation:

(1) Customary easements for public utilities, party walls, driveways, and other purposes; customary building or use restrictions for breach of which there is no reversion and which have not been violated to a material extent;

(2) Such restrictions when coupled with a reversionary clause, provided there has been no violation prior to the date of the deed to the Commissioner;

(3) Slight encroachments by adjoining improvements;

(4) Outstanding oil, water, or mineral rights which, in the opinion of the Commissioner, do not impair the value of the property for residence purposes, or which are customarily waived by prudent lending institutions and leading attorneys generally in the community.

Assignments

§ 611.259 Assignment of project mortgages.

(a) Bonds or other obligations issued in connection with an insured mortgage executed in the form of an indenture of trust providing for the issue and sale of such bonds or other obligations and appointing a trustee to act on behalf of the holders of such bonds or other obligations may be transferred as provided in the indenture of trust.

(b) An insured mortgage, other than a mortgage executed in the form of an indenture of trust providing for the issue and sale of bonds or other obligations and appointing a trustee to act on behalf of the holders of such bonds or other obligations, may be transferred (but, except with the written approval of the Commissioner, only subsequent to full disbursement of the mortgage loan) to a transferee who is a mortgagee approved by the Commissioner. Upon such approval and transfer and the assumption by the transferee of all obligations under the contract of insurance, the transferor shall be released from its obligations under the contract of insurance.

(c) The contract of insurance shall terminate with respect to mortgages described in paragraph (b) of this section upon the happening of either of the following events:

(1) The acquisition of the insured mortgage by or the pledge thereof to any person, firm, or corporation, public or private, except as specifically provided in paragraph (b) of this section.

(2) The disposal by a mortgagee of any partial interest in the insured mortgage by means of a declaration of trust or by a participation or trust certificate or by any other device unless with the prior written approval of the Commissioner: *Provided*, That this subparagraph shall not be applicable to any mortgage so long as it is held in a common trust fund maintained by a bank or trust company (i) exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank or trust company in its capacity as a trustee, executor or administrator; and (ii) in conformity with the rules and regulations prevailing from time to time of the Board of Governors of the Federal Reserve System, pertaining to the collective investment of trust funds: *Provided further*, That this subparagraph shall not be applicable to any mortgage so long as it is held in a common trust estate administered by a bank or trust company which is subject to the inspection and supervision of a governmental agency, exclusively for the benefit of other banking institutions which are subject to the inspection and supervision of a governmental agency, and which are authorized by law to acquire beneficial interests in such common trust estate, nor to any mortgage transferred to such a bank or trust company as trustee exclusively for the benefit of outstanding owners of undivided interests in the trust estate, under the terms of certificates issued and sold more than three years prior to said transfer, by a corporation which is subject to the inspection and supervision of a governmental agency.

§ 611.260 Assignment of individual mortgages.

The provisions of the Administrative regulations under section 203 of the National Housing Act governing the assignments of insured mortgages shall likewise govern the assignments of individual mortgages insured under section 611 of the act.

Rights in Housing Fund

§ 611.261 No vested right.

Neither the mortgagee nor the mortgagor shall have any vested or other right in the "War Housing Insurance Fund".

Amendments

§ 611.262 Amendments to regulations in this part.

The regulations in this part may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendments shall not affect the contract of insurance on any mortgage already insured or any mortgage or prospective mortgage on which the Commissioner has made a commitment to insure.

Effective Date

§ 611.263 Effective date.

The regulations in this part shall be effective as to all mortgages with respect to which a commitment to insure under section 611 of the act is issued on or after the date of this part.

SUBCHAPTER S—INSURANCE FOR INVESTMENTS IN RENTAL HOUSING FOR FAMILIES OF MODERATE INCOME

PART 702—YIELD INSURANCE

Subpart A—Eligibility Requirements

APPROVAL OF INVESTORS

Sec.
702.1 Classification of investors.
702.2 Withdrawal of approval.

APPLICATION AND COMMITMENT

702.3 Submission of application.
702.4 Form of application.
702.5 Application and commitment fee.
702.6 Inspection fee.
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ELIGIBLE PROJECTS

702.8 Project eligibility requirements.

RENTS

702.9 Rental schedule.
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TITLE

702.11 Title.

EFFECTIVE DATE

702.12 Effective date.

Subpart B—Contract Rights and Obligations

702.251 Definitions.
702.252 Premiums.
702.253 Contract of insurance.
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702.256 Payment of claims.
702.257 Debentures.
702.258 Termination and reinstatement of contract of insurance.
702.259 Amendments.
702.260 Effective date.

AUTHORITY: §§ 702.1 to 702.260 issued under sec. 712, 62 Stat. 1281, as amended; 12 U.S.C. 1747k.

Subpart A—Eligibility Requirements

APPROVAL OF INVESTORS

§ 702.1 Classification of investors.

Such of the following may become an approved investor as the Commissioner shall find to be qualified by business experience and facilities to afford assurance of the necessary continuity of long-term investment and to have available the necessary capital required for long-term investment in the project and shall approve as eligible for insurance under Title VII of the National Housing Act:

(a) Any natural person;

(b) Any group of not more than ten natural persons;

(c) Any corporation, company, association, trust or other legal entity; or

(d) Any combination of two or more corporations, companies, associations, trusts or other legal entities having all the powers necessary to comply with the requirements of such title.

§ 702.2 Withdrawal of approval.

Approval of an investor may be withdrawn by notice from the Commissioner at any time for cause deemed sufficient by the Commissioner, but no withdrawal will affect any commitment or contract of insurance theretofore entered into with such investor.

APPLICATION AND COMMITMENT

§ 702.3 Submission of application.

Any approved investor may submit an application for insurance in connection with an investment which it proposes to make pursuant to the provisions of Title VII of the National Housing Act.

§ 702.4 Form of application.

The application must be made upon a standard form prescribed by the Commissioner and filed at the local Federal Housing Administration office serving the area in which the property is located.

§ 702.5 Application and commitment fee.

The application must be accompanied by the investor's check to cover an application fee computed at the rate of $150 per $1,000 of the estimated investment stated in the application, to cover the cost of analysis by the Commissioner, and at the time of delivery of the commitment a further sum (referred to as commitment fee) shall be paid, which, when added to the application fee, will aggregate $3.00 per $1,000 of the estimated investment as specified in the commitment. If the application is refused as a result of preliminary examination by the Commissioner, the fee paid will be returned to the applicant, but no portion of the fee will be returned after further work has been performed following preliminary examination. If the amount of established investment is increased after insurance, the fees herein provided for shall be based upon the amount of such increase.

§ 702.6 Inspection fee.

An inspection fee computed at the rate of $2.00 per $1,000 of the face amount of the commitment shall be paid as provided for in the commitment.

§ 702.7 Approval of application.

Upon approval of an application a commitment will be issued upon a form approved by the Commissioner setting forth the terms and conditions upon which the insurance will be granted.

ELIGIBLE PROJECTS

§ 702.8 Project eligibility requirements.

To be eligible for insurance, a project shall meet the following conditions:

(a) The Commissioner shall be satisfied that there is in the locality or metropolitan area of such project a need for new rental dwellings at rents comparable to the rents proposed to be charged for the dwellings in such project.

(b) The project shall be economically sound and shall contain at least twenty-five (25) dwelling units.

(c) The dwellings in such project shall be acceptable to the Commissioner as to quality, design, size and type.

(d) The investor shall establish in a manner satisfactory to the Commissioner that good and merchantable title in fee simple or under long-term leasehold (under a lease having a term of not less than 99 years which is renewable or under a lease having not less than 60 years to run from the date of commitment to insure under Title VII of the act is executed) satisfactory to the Commissioner to the real estate to be included in the project is vested in the investor free and clear of liens and will so remain as long as the contract of insurance remains in force, and after completion of the project, the investor must establish that there are no outstanding unpaid obligations contracted in connection with the construction or completion of the project, except taxes and such other liens and obligations as may be approved or prescribed by the Commissioner. Debentures issued by the investor which are payable out of net income from the project and from the benefits of the insurance contract shall not be construed as "unpaid obligations" as such term is used in this paragraph.

(e) The project may include, in addition to the dwellings, such stores, commercial or community facilities as the Commissioner shall determine to be necessary or desirable appurtenances to the project.

(f) The investor shall establish in a manner satisfactory to the Commissioner that it has and will make available sufficient funds to complete the project in accordance with the plans and specifications approved by the Commissioner.

(g) An investor must establish that no restriction upon the sale or occupancy of the project, on the basis of race, color, or creed, has been filed of record at any time subsequent to February 15, 1950, and must certify that so long as the insurance contract remains in force he will not file for record any restriction affecting the project or execute any agreement, lease, or conveyance affecting the project which imposes any such restriction upon its sale or occupancy.

(h) (1) Any contract or subcontract executed for the performance of construction of the project shall comply with all applicable labor standards and provisions of the regulations of the Secretary of Labor, issued May 9, 1951 (29 CFR 5.1 to 5.12).

(2) No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of the contractors or subcontractors established and maintained by the Comptroller General, pursuant to regulations of the Secretary of Labor (29 CFR 5.6 (b)).

(3) No project shall be eligible for insurance unless subsequent to completion of construction there is filed a certificate, executed by the general contractor, in the form required by the Commissioner, certifying that the laborers and mechanics employed in the construction of the dwelling or dwellings or housing project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor prior to the beginning of construction and after the date of filing of the application for insurance.

RENTS

§ 702.9 Rental schedule.

No charge shall be made by the investor for the dwelling accommodations offered by the project in excess of that

provided in a rental schedule to be filed with the Commissioner and approved by him or his duly constituted representative prior to the opening of the project for rental: *Provided,* That in no event shall the rent proposed to be charged or collected for any dwelling in the project, including charges for heat and other customary services as determined by the Commissioner, exceed $120 per month, nor shall the average rental for all dwellings in the project exceed $100 per month.

§ 702.10 Charges in addition to maximum rental.

The established maximum rental shall be the maximum authorized charge against any tenant for the dwelling accommodations offered exclusive of telephone, gas, electric, and refrigeration services. Charges in addition to such maximum rental may be made against a tenant for telephone, gas, electric, refrigeration, and other facilities and privileges furnished by the investor, but only with the approval of the Commissioner. No additional amounts may be required from a tenant in the nature of security deposits as a condition to occupancy of such units without the prior approval of the Commissioner.

TITLE

§ 702.11 Title.

At the time the contract of insurance is executed, the investor shall furnish to the Commissioner a survey satisfactory to him and a policy of title insurance as provided in paragraph (a) of this section: *Provided, however,* That in the event the investor is unable to furnish such policy for reasons satisfactory to the Commissioner the investor, without expense to the Commissioner, shall furnish evidence of title as prescribed in paragraphs (b), (c) or (d) of this section as the Commissioner may require.

(a) An owner's policy of title insurance issued by a company satisfactory to the Commissioner in such form and amount as may be approved by the Commissioner. Such policy shall run to the investor and the Commissioner as their respective interests may appear and may contain such exceptions, restrictions and limitations as are approved by the Commissioner.

(b) An abstract of title satisfactory to the Commissioner prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner as to the quality of such title signed by an attorney experienced in the examination of titles.

(c) A Torrens or similar title certificate.

(d) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America or of any State or Territory thereof.

EFFECTIVE DATE

§ 702.12 Effective date.

The administrative rules in this subpart are effective as to all projects on which a commitment to insure under Title VII is issued on or after November 12, 1948.

Subpart B—Contract Rights and Obligations

§ 702.251 Definitions.

As used in this subpart, the following terms shall have the meanings respectively ascribed to them below, and unless the context clearly indicates otherwise, shall include the plural as well as the singular number.

(a) The term "Commissioner" shall mean the Federal Housing Commissioner.

(b) The term "act" shall mean the National Housing Act, as amended.

(c) The term "contract of insurance" shall mean the written instrument duly executed by the Commissioner and the investor, setting forth the terms, conditions and provisions of insurance.

(d) The term "investor" shall mean the insured named in the contract of insurance and shall include any assignee, pledgee or transferee of the insured which has been approved by the Commissioner and which is entitled to receive the benefits of the insurance contract.

(e) The term "project" shall mean a project (including all property, real and personal, contracts, rights and choses in action acquired, owned or held by the investor in connection therewith) of an investor designed and used primarily for the purpose of providing dwellings, the occupancy of which is permitted by the investor in consideration of agreed charges, and may include such stores, offices, commercial, community or other facilities as the Commissioner may approve.

(f) The term "estimated investment" shall mean the estimated cost of the development of the project as stated in the application submitted to the Commissioner for insurance under Title VII of the act and the regulations in this subpart.

(g) The term "establishment investment" shall mean the amount of the reasonable costs as approved by the Commissioner, incurred by the investor in, and necessary for, carrying out all works and undertakings for the development of the project, and shall include the premium charge for the first operating year and the cost of all necessary surveys, plans and specifications, architectural, engineering, or other special services (land acquisition, site preparation, construction and equipment; a reasonable return on the funds of the investor paid out in the course of the development of the project up to, and including, the initial occupancy date; necessary expenses in connection with the initial occupancy of the project; and the cost of such items as the Commissioner shall determine to be necessary for the development of the project:

(1) Less the amount by which the rents and revenues derived from the project up to, and including, the initial occupancy date exceeded the reasonable and proper expenses as approved by the Commissioner, incurred by the investor in, and necessary for, operating and maintaining said project up to, and including, the initial occupancy date, or

(2) Plus the amount by which such expenses exceeded such rents and revenues as the case may be: *Provided,* That the amount of the established investment so determined and approved by the Commissioner as of the date of initial occupancy of the project shall be subject to adjustment from time to time pursuant to the authority contained in section 712 of the act, and in accordance with the regulations in this subpart, to provide for increases, in such amounts as the Commissioner determines, if the investor makes capital improvements or additions to the project, or to provide for decreases, in such amounts as the Commissioner determines, if any part of the project is sold or transferred.

(h) The term "physical completion date" shall mean the last day of the calendar month in which the Commissioner determines that the construction of the project is substantially completed and substantially all of the dwellings therein are available for occupancy.

(i) The term "initial occupancy date" shall mean the last day of the calendar month in which 90 percent in number of the dwellings in the project on the physical completion date shall have been occupied, but shall in no event be later than the last day of the sixth calendar month next following the physical completion date.

(j) The term "operating year" shall mean the period of 12 consecutive calendar months next following the initial occupancy date and each succeeding period of 12 consecutive calendar months, and the period of the first 12 consecutive calendar months next fol-

lowing the initial occupancy date shall be the first operating year.

(k) The term "gross income" for any operating year shall mean the total rents and revenues and other income derived from, or in connection with, the project during such operating year.

(l) The term "operating expenses" for any operating year shall mean the amounts, as approved by the Commissioner, necessary to meet the reasonable and proper costs of, and to provide for, operating and maintaining the project, and to establish and maintain reasonable and proper reserves for repairs, maintenance, and replacements, and other necessary reserves during such operating year, and shall include necessary expenses for real estate taxes, special assessments, premium charges made pursuant to Title VII of the act and the regulations in this part, administrative expenses, the annual rental under any lease pursuant to which the real property comprising the site of the project is held by the investor, and insurance charges, together with such other expenses as the Commissioner shall determine to be necessary for the proper operation and maintenance of the project, but shall not include income taxes.

(m) The term "net income" for any operating year shall mean gross income remaining after the payment of the operating expenses.

(n) The term "minimum annual amortization charge" shall mean an amount equal to 2 percent of the established investment, except that in the case of a project where the real property comprising the site thereof is held by the investor under a lease, if (notwithstanding the proviso of § 702.252) the gross income for any operating year shall be less than the amount required to pay the operating expenses (including the annual rental under such lease), the minimum annual amortization charge for such operating year shall mean an amount equal to 2 percent of the established investment plus the amount of the annual rental under such lease to the extent that the same is not paid from the gross income.

(o) The term "annual return" for any operating year shall mean the net income remaining after the payment of the minimum annual amortization charge.

(p) The term "insured annual return" shall mean an amount not to exceed 2¾ percent per annum on the outstanding investment and shall be fixed in the commitment to insure or in the contract of insurance.

(q) The term "minimum annual return" for any operating year shall mean an amount equal to 3½ percent of the outstanding investment for such operating year or such lesser amount as shall be agreed upon by the investor and the Commissioner.

(r) The term "excess earnings" for any operating year shall mean the net income derived from the project in excess of the minimum annual amortization charge and the minimum annual return and income taxes.

(s) The term "outstanding investment" for any operating year shall mean the established investment less an amount equal to:

(1) The aggregate of the minimum annual amortization charge for each preceding operating year plus

(2) The aggregate of the excess earnings, if any, during each preceding operating year applied, in addition to the minimum annual amortization charge, to amortization in accordance with the provisions of § 702.254:

Provided, That the outstanding investment for any operating year shall be subject to adjustment in such amounts as the Commissioner determines, pursuant to the authority contained in section 712 of the act and the regulations in this subpart, to provide for a reduction in such outstanding investment for any operating year pending the restoration of damage to the project caused by fire, flood, earthquake, tornado or other casualty.

§ 702.252 Premiums.

(a) The investor shall pay to the Commissioner an annual insurance premium in an amount equal to ½ of 1 percent of the outstanding investment for the operating year for which such premium charge is payable without taking into account the excess earnings, if any, applied, in addition to the minimum amortization charge, to amortization of the outstanding investment. Such premium charge shall be payable annually in advance by the investor either in cash or debentures issued by the Commissioner under Title VII of the act at par plus accrued interest: *Provided,* That if in any operating year the gross income shall be less than the operating expenses, the premium charge payable during such operating year shall be waived, but only to the extent of the amount of the difference between such expenses and such income and subject to subsequent payment out of any excess earnings as provided in § 702.254.

(b) The first premium covering the first operating year shall be payable on the date the contract of insurance is executed and subsequent annual premiums shall be paid on or before the first day of each succeeding operating year until the project is acquired by the Commissioner or until the contract of insurance is otherwise terminated as set forth in § 702.258. At the close of each operating year the premium payable in advance for such operating year may be adjusted to take into account any increase or decrease in the outstanding investment for such operating year pursuant to the authority contained in section 712 of the act and the regulations in this subpart and any excess premiums collected shall be refunded to the investor and any deficiencies in the amount of the premium already collected and the amount found to be due for such operating year shall be paid by the investor.

§ 702.253 Contract of insurance.

Upon compliance satisfactory to the Commissioner with the terms of the commitment to insure, the Commissioner and the investor shall execute the contract of insurance. The Commissioner and the investor shall thereafter be bound by the contract of insurance, subject to the provisions of the regulations in this subpart which shall form part of each such contract. Any or all rights, claims or other benefits under the provisions of the insurance contract may be assigned, pledged or otherwise transferred upon such terms and conditions as may be approved by the Commissioner and agreed upon by an instrument in writing executed by the original investor and by an assignee, pledgee, or other transferee satisfactory to the Commissioner.

§ 702.254 Excess earnings.

For all of the purposes of any insurance contract, 50 percent of the excess earnings, if any, for any operating year may be applied, in addition to the minimum annual return, to return on the outstanding investment but only to the extent that such application thereof does not result in an annual return of more than 5 percent of the outstanding investment for such operating year, and the balance of any such excess earnings shall be applied, in addition to the minimum annual amortization charge, to amortization of the outstanding investment: *Provided,* That if in any preceding operating years the gross income shall have been less than the operating expenses, such excess earnings shall be applied to the extent necessary in whole or in part, first, to the reimbursement of the amount of the difference between such expenses (exclusive of any premium charges previously waived under § 702.252) and such income, and second, to the payment of any premium charges previously waived hereunder.

§ 702.255 Supervision of investor.

(a) *Maintenance of books and records.* The investor shall establish and maintain such books, records and accounts with respect to the insured project as may be prescribed by the Commissioner and will, in the judgment of the Commissioner, adequately and accurately reflect the condition and operations of the project. The investor shall agree to permit the Commissioner or his agent at all reasonable times upon request to examine any and all books, records, contracts, documents, and accounts of the investor which reflect in any way the condition or operations of the project.

(b) *Financial and operating statements.* With respect to each project, the contract of insurance shall provide that after the close of each operating year the investor shall submit to the Commissioner for approval a financial and operating statement covering such operating year in such form as the Commissioner may prescribe. If any such financial and operating statement shall not have been submitted or, for proper cause, shall not have been approved by the Commissioner, payment of any claim submitted by the investor may, at the option of the Commissioner, be withheld, in whole or in part, until such statement shall have been submitted and approved.

(c) *Special information and reports.* The investor shall furnish, at the request of the Commissioner or his agent, specific answers to questions upon which information is desired from time to time relating to the income, assets, liabilities, contracts, operation, rents, or condition

shall mean an amount not to exceed in any operating year the gross income outstanding investment but only to the contracts, operation, rents, or condition

of the property and any other information with respect to the investor or the project which may reasonably be required.

(d) *Rents to conform with rental schedule.* The investor shall charge and collect rents for the dwelling units in the project only in accordance with a rent schedule approved by the Commissioner. No change therein nor additional requirements in the nature of security deposits as a condition to occupancy of such units shall be made by the investor without the prior approval of the Commissioner.

(e) *Increases and decreases in established investment.* No capital expenditure for additions or improvements which would have the effect of increasing the established investment or no sale of any portion of the project which would have the effect of reducing the established investment shall be made without the prior written approval of the Commissioner. In no event shall the investor mortgage or pledge all or any part of the project as security for any debt so long as the contract of insurance remains in force.

§ 702.256 Payment of claims.

If in any operating year the net income of a project is less than the aggregate of the minimum annual amortization charge and the insured annual return, the Commissioner, upon submission by the investor of a claim for the payment of the amount of the difference between such net income and the aggregate of the minimum annual amortization charge and the insured annual return, and after proof of the validity of such claim, shall pay to the investor in cash from the Housing Investment Insurance Fund the amount of such difference as determined by the Commissioner, but not exceeding in any event an amount equal to the aggregate of the minimum annual amortization charge and the insured annual return.

§ 702.257 Debentures.

(a) *Commissioner's right to acquire project.* If the aggregate of the amounts paid to the investor pursuant to § 702.256 shall at any time equal or exceed 15 percent of the established investment, the Commissioner thereafter shall have the right, after written notice to the investor of his intention so to do, to acquire, as of the first day of the operating year after such notice is given, such project in consideration of the issuance and delivery to the investor of debentures having a total face value equal to 90 percent of the outstanding investment for such operating year. In any such case, the investor shall be obligated to transfer and convey to the Commissioner good and merchantable title to the project undamaged by fire, earthquake, flood, tornado, or waste, and free and clear of all liens, encumbrances, and defects, except such as were approved by the Commissioner at the time the project was insured or may be approved by him at the time of such transfer, and shall furnish to the Commissioner satisfactory continuation of the title evidence approved at the time of insurance to, and including, the transfer to the Commissioner without cost to him. In the event the investor fails to meet the obligation described in the preceding sentence, the Commissioner may, at his option, terminate the insurance contract.

(b) *Investor's right to convey project to Commissioner.* If in any operating year the aggregate of the differences between the operating expenses (exclusive of any premium charges previously waived under § 702.252) and the gross income for the preceding operating years, less the aggregate of any deficits in such operating expenses reimbursed from excess earnings as provided in § 702.254, shall at any time equal or exceed 5 percent of the established investment, the investor shall thereafter have the right, after written notice to the Commissioner of his intention so to do, to convey the project to the Commissioner as of the first day of the operating year after such notice is given, and to receive from the Commissioner debentures having a total face value equal to 90 percent of the outstanding investment for such operating year. In any case, the investor shall be obligated to transfer and convey to the Commissioner good and merchantable title to the project, undamaged by fire, earthquake, flood, tornado, or waste, and free and clear of all liens, encumbrances and defects, except such as were approved by the Commissioner at the time the project was insured or may be approved by him at the time of such transfer, and shall furnish the Commissioner satisfactory continuation of the title evidence approved at the time of insurance to, and including, the transfer to the Commissioner without cost to him.

(c) *Waste.* The term "waste" as used in paragraphs (a) and (b) of this section means permanent or substantial injury caused by unreasonable use or abuse, and is not intended to include damage caused by ordinary wear and tear.

(d) *Effect of Commissioner's acquisition of project.* Upon the acquisition of a project by the Commissioner pursuant to this section, the insurance contract shall terminate.

(e) *Date and term of debentures.* The debentures issued under Title VII of the act to any investor shall be issued in accordance with the provisions of section 708 of the act, shall be dated as of the first day of the operating year in which the project for which such debentures were issued was acquired by the Commissioner, shall bear interest at the rate of 2¾ percent per annum, payable semiannually on the first day of January and the first day of July of each year, and shall mature on the first day of July in the twentieth year following the date of issuance thereof. Such debentures shall be registered as to principal and interest and all or any such debentures may be redeemed at the option of the Commissioner with the approval of the Secretary of the Treasury at par and accrued interest on any interest payment date on 3 months' notice of redemption given in such manner as the Commissioner shall prescribe. Such debentures shall be issued in multiples of $50 and any difference not in excess of $50 between the amount of debentures to which the investor is otherwise entitled hereunder and the aggregate face value of the debentures issued shall be paid in cash by the Commissioner to the investor.

§ 702.258 Termination and reinstatement of contract of insurance.

(a) *Termination of insurance contract at investor's option.* The investor, after written notice to the Commissioner of his intention to do so, may terminate, as of the close of any operating year in which such notice is given, any contract of insurance, upon payment to the Commissioner of an adjusted premium charge of 1 percent of the established investment but not in excess of the aggregate amount of the premium charges which the investor otherwise would have been required to pay if such contract of insurance had not been so terminated.

(b) *Termination of insurance contract at Commissioner's option.* The Commissioner may, at his option, terminate any insurance contract in the event that:

(1) The investor fails or refuses for a period of 30 days after receipt of a demand by the Commissioner to pay insurance premiums in accordance with the provisions of § 702.252.

(2) The investor sells or transfers all or any part of the project without the approval of the Commissioner.

(3) The investor fails or refuses to comply with the requirements and submit to the supervision of the Commissioner in the manner and to the extent prescribed in § 702.255.

(c) *Reinstatement of insurance contract.* Upon application by the investor and compliance with such terms and conditions as may be required by the Commissioner in connection with the particular transaction any contract of insurance terminated pursuant to paragraph (b) of this section may be reinstated, subject to the investor making payment to the Commissioner of an amount equal to the insurance premiums which would have been due and payable if the contract of insurance had not been terminated.

(d) *Expiration of insurance contract.* Any insurance contract shall expire as of the first day of the operating year for which the outstanding investment amounts to not more than 10 percent of the established investment.

§ 702.259 Amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time in whole or in part but such amendments shall not affect any contract of insurance or any commitment to insure issued prior thereto.

§ 702.260 Effective date.

The regulations in this subpart shall be effective as to all contracts of insurance or commitments to insure issued subsequent to the date hereof.

SUBCHAPTER T—MILITARY AND ARMED SERVICES HOUSING MORTGAGE INSURANCE

PART 803—ARMED SERVICES HOUSING—MILITARY PERSONNEL

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AUTHORITY: §§ 803.1 to 803.264 issued under secs. 803, 807, 69 Stat. 647, as amended, 651; 12 U.S.C. 1748b, 1748f.

Subpart A—Eligibility Requirements

APPLICATION AND COMMITMENT

§ 803.1 Submission of application.

Applications for mortgage insurance may be submitted in triplicate through the local Federal Housing Administration office on a standard form prescribed by the Commissioner, which shall be fully executed, including all the required exhibits. The application must cover housing designed for use by the Military and the Coast Guard as provided under Title VIII of the National Housing Act as amended. All reference in this subpart to the Military or Secretary of Defense shall be deemed to include the Coast Guard and the Secretary of the Treasury.

§ 803.2 Certification by Secretary to Commissioner.

Applications for mortgage insurance will not be accepted unless there has been executed an instrument by the Secretary of Defense or his designee certifying to the Commissioner that the Secretary or his designee has met the requirements of section 803(b)(2) of the National Housing Act, as amended.

§ 803.3 Application fee.

(a) No application will be considered unless the fee therefor has been paid. This fee, referred to as the application fee, is $1.50 per thousand of the face amount of the loan applied for.

(b) If an application is rejected before it is assigned for processing by the Commissioner, or in such other instances as the Commissioner may determine, the entire fee or any portion thereof may be returned to the applicant.

§ 803.4 Issuance of commitment.

(a) Upon approval of an application for mortgage insurance a commitment will be issued setting forth the terms and conditions upon which the mortgage will be insured, including special requirements applicable to the project, and instruments evidencing full compliance satisfactory to the Commissioner with the provisions of this subpart and with such terms and conditions.

(b) The commitment will provide for advances of mortgage money during construction and the insurance of such advances as made.

(c) No commitment shall be valid unless signed by the Commissioner or his agent authorized for that purpose, and shall be effective for a stated period, not in excess of 120 days, provided that the commitment fee shall have been paid as required. A commitment may be renewed in such manner as the Commissioner may from time to time specify.

§ 803.5 Commitment fee.

A further sum, referred to as commitment fee, which when added to the application fee will aggregate $3.00 per thousand of the face amount of the mortgage loan set forth in the commitment shall be paid within 30 days subsequent to the date of the commitment, or within such additional period of time as may be agreed to in writing by the Commissioner.

ELIGIBLE MORTGAGES

§ 803.6 Mortgage forms.

The mortgage must be executed upon a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated, by a mortgagor with the qualifications hereinafter provided in this subpart, must be a first lien upon property that conforms with the property standards prescribed by the Commissioner, and the mortgagee must be obligated, as a part of the mortgage transaction, to disburse the principal amount of the mortgages, to, or for the account of, the mortgagor in an amount due in accordance with the provisions of this subpart and in conformity with the terms of the commitment. Any changes in the form desired by the mortgagor and mortgagee must receive prior written approval of the Commissioner.

§ 803.7 Maximum mortgage amount; replacement cost.

(a) The mortgage or mortgages shall involve a total principal obligation not to exceed the amount which the Commissioner estimates will be the replacement cost of the property or project when the proposed improvements are completed including the replacement cost of ranges, refrigerators, shades, screens and fixtures. Such cost may include the cost of the land, the physical improvements, and utilities within the boundaries of the property or project.

(b) The mortgage amount is subject to other limitations as provided in §§ 803.8 and 803.9.

That should the financing of housing to be constructed pursuant to a single invitation for bids be accomplished by two or more mortgages, the principal obligation of any single mortgage may exceed an average of $16,500 per family unit if the sum of the principal obligations of all mortgages for such housing does not exceed an average of $16,500 per family unit.

(b) In addition to the dollar limitation prescribed in this section the mortgage amount is subject to other limitations as provided in §§ 803.7 and 803.9.

§ 803.8 Maximum mortgage amount; dollar limitation.

(a) The mortgage or mortgages shall involve a total principal obligation in an amount not to exceed an average of $16,500 per family unit for such part of the project as may be attributable to dwelling use including ranges, refrigerators, shades, screens, and fixtures, less the amount of the Commissioner's estimated value of any usable utilities within the boundaries of the project where owned by the United States and not provided for out of the proceeds of the mortgage.

(b) Should the financing of housing to be constructed pursuant to a single invitation for bids be accomplished by two or more mortgages, the principal obligation of any single mortgage may exceed an average of $16,500 per family unit if the sum of the principal obligations of all mortgages for such housing does not exceed an average of $16,500 per family unit.

(c) No mortgage shall be insured unless it is established by a certificate of the Military or otherwise that the cost of no family unit contracted for after June 7, 1960, and included in the mortgaged property shall exceed $19,800.

(d) In addition to the dollar limitation prescribed in this section the mortgage amount is subject to other limitations as provided in §§ 803.7 and 803.9.

§ 803.9 Maximum mortgage amount; successful bid.

(a) The mortgage or mortgages shall involve a total principal obligation not to exceed the amount of the successful bid of the eligible bidder of the project. The term "eligible bidder" means a person, partnership, firm, or corporation determined by the Secretary of Defense, after consultation with the Commissioner (1) to be qualified by experience and financial responsibility to construct housing of the type described and provided for under Title VIII of the National Housing Act, and (2) to have submitted the lowest acceptable bid.

(b) In addition to the bid limitation prescribed in this section, the mortgage amount is subject to other limitations as provided in §§ 803.7 and 803.8.

§ 803.10 Mortgage maturity and amortization.

The mortgage shall have maturity and amortization provisions satisfactory to the Commissioner but in no event shall the maturity exceed 30 years from the date of the beginning of amortization.

(Sec. 803, 69 Stat. 647, as amended; 12 U.S.C. 1748b)

§ 803.11 Payment requirements.

(a) The mortgage shall provide for monthly payments on the first day of each month by the mortgagor to the mortgagee on account of interest and principal.

(b) Such monthy payments will be on a level annuity basis.

(c) The Commissioner shall establish the date of the first payment to princpal on the first day of the first month which falls not less than 60 days after the date fixed for the completion of construction in the Housing Contract.

(d) Before final endorsement for insurance, where necessary, the mortgage shall be modified, so that in no event shall the first payment to principal be later than the first day of the first month which falls not less than 30 days after such final endorsement.

§ 803.12 Maximum interest rate.

The mortgage may bear interest at such rate as may be agreed upon by the mortgagee and mortgagor, but in no case shall such interest rate be in excess of 4½ percent. Interest shall be payable in monthly installments on the principal then outstanding.

§ 803.13 Mortgage to cover the entire property.

The mortgage shall cover the entire property included in the housing project.

§ 803.14 Covenant against liens.

The mortgage shall, except as otherwise provided in this subpart, contain a covenant against the creation by the mortgagor of liens against the property superior or inferior to the lien of the mortgage.

§ 803.15 Standards and conditions of acceptability.

The mortgage shall be executed with respect to a project which, in the opinion of the Commissioner, is an acceptable risk in view of the Certificate of Need issued by the Secretary of Defense. Such project or property shall comply with such standards and conditions as the Commissioner may prescribe to establish its acceptability for mortgage insurance.

§ 803.16 Accumulation of accruals.

The mortgage shall provide for payments by the mortgagor to the mortgagee on each interest payment date of an amount sufficient to accumulate in the hands of the mortgagee one payment period prior to its due date, the next annual mortgage insurance premium payable by the mortgagee to the Commissioner. Such payments shall continue only so long as the contract of insurance shall remain in effect.

§ 803.17 Application of payments.

(a) The mortgage shall provide that all monthly payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate amount thereof shall be paid by the mortgagor upon each monthly payment date in a single payment. The mortgagee shall apply the same to the following items in the order set forth:

(1) Premium charges under the contract of insurance;

(2) Interest on the mortgage;

(3) Amortization of the principal of the mortgage.

(b) Any deficiency in the amount of any such aggregate monthly payment shall constitute an event of default. The mortgage shall further provide for a grace period of 30 days, within which time the default must be made good.

§ 803.18 Prepayment.

The mortgage shall contain a provision that the mortgagor shall have the right to prepay the mortgage in whole or in part without any additional charge or penalty on or after the date which is 20 years from the date of the first payment to principal on the mortgage. The mortgage may provide that there shall be no right of prepayment prior to the expiration of such 20 year period.

(Sec. 803, 69 Stat. 647, as amended; 12 U.S.C. 1748b)

§ 803.19 Maximum charges, fees or discounts.

The mortgagee may collect from the mortgagor the amount of the application and commitment fees provided for in this subpart and may charge the mortgagor an initial service charge to reimburse itself for the cost of closing the transaction, in an amount not to exceed 1½ percent of the original principal amount of the mortgage. Any additional charges shall be subject to prior approval of the Commissioner.

§ 803.21 Issuance of bonds.

In the event that bonds are to be issued as a part of the insured mortgage transaction, all arrangements with respect to the issuance and sale of such bonds shall be subject to approval by the Commissioner.

§ 803.22 Mortgage covenant regarding racial restrictions.

The mortgage shall contain a covenant by the mortgagor that until the mortgage has been paid in full, or the contract of insurance otherwise terminated, he will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the mortgaged property on the basis of race, color or creed. Such covenant shall be binding upon the mortgagor and his assigns and shall provide that upon violation thereof, the mortgagee may, at its option, declare the unpaid balance of the mortgage immediately due and payable.

ELIGIBLE MORTGAGORS

§ 803.23 Private corporation eligible.

A private corporation (referred to in this subchapter as "mortgagor," "Corporation," or "mortgagor corporation") is eligible for mortgage insurance if formed or created, with the approval of the Commissioner for the purpose of providing housing for rent or sale, and possessing powers necessary therefor and incidental thereto. So long as such contract of insurance is in effect, the corporation shall engage in no business other than the construction and operation of a housing project limited to nontransient occupancy.

§ 803.24 Certification as to liens and obligations.

Both the mortgagor and the builder who has been determined to be the eligible bidder shall certify at final endorsement of the loan for insurance that:

(a) The property covered by the mortgage is free and clear of all liens other than such mortgage, except such liens as may be approved by the Commissioner; and

(b) There will not be outstanding any unpaid obligation contracted in connection with the mortgage transaction, the purchase of the mortgaged property, or the construction of the project, except such obligations as may be approved by the Commissioner.

SUPERVISION OF MORTGAGORS

§ 803.25 Corporate stock.

(a) *Acquisition of capital stock by Commissioner.* Arrangements satisfactory to the Commissioner shall be made under which the capital stock of the mortgagor corporation may be acquired by him, together with the resignations of the officers and directors of the corporation, where he determines such acquisition is necessary for the protection of the FHA as insurer of the mortgage. Upon such acquisition the Commissioner may accept the resignations of the officers and directors of the corporation, appoint such officers and agents as may be satisfactory to him, and exercise all rights as the holder of the capital stock of the corporation.

(b) *Stock acquisition by Military.* Upon completion of the project the Military shall acquire all the capital stock of the mortgagor corporation and shall hold the same and manage and operate the project property so long as there is outstanding thereon a mortgage insured by the Commissioner.

§ 803.26 Agreement covering advances.

The mortgagor and mortgagee shall, prior to the insurance of the mortgage, execute an agreement acceptable to the Commissioner providing for the manner and conditions under which advances (if any) during construction are to be made by the mortgagee and approved for insurance by the Commissioner. Such agreement shall require the mortgagee to notify the Commissioner, through the insuring office having jurisdiction over the territory in which the property is situated, in writing, on an application form prescribed by the Commissioner, of the proposed date and the amount of the advance to be made, and the Commissioner shall deliver to the mortgagee within a reasonable time from the date of such notice a certificate executed on behalf of the Commissioner on a form prescribed by him setting forth the amount approved for insurance or advising the mortgagee of the Commissioner's nonapproval and setting forth the reasons therefor. Such agreement shall be set forth on a form approved by the Commissioner; shall contain such additional terms, conditions, and provisions as the Commissioner shall in the particular case prescribe or approve, and when properly executed shall constitute a part of the mortgage insurance contract.

§ 803.27 Completion assurance.

Assurance for the completion of a project shall be a performance bond and a payment bond satisfactory to the Commissioner and the Secretary of Defense or his designee with the mortgagor and mortgagee as joint obligees.

§ 803.28 Labor standards.

(a) Any contract or subcontract executed for the performance of construction of the project shall comply with all applicable Labor Standards and provisions of the Regulations of the Secretary of Labor, issued May 9, 1951, 21 CFR 5.1–5.12.

(b) The Military shall make all compliance inspections, investigations and payroll examinations and report thereon to the Commissioner.

§ 803.29 Ineligible contractors.

No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established and maintained by the Commissioner or by the Comptroller General, pursuant to the provisions of Regulations of the Secretary of Labor, issued May 9, 1951, 29 CFR 5.6 (b).

§ 803.30 Ineligible advances.

Unless approved by the Commissioner no advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed, on an ineligible list as prescribed in § 803.29.

§ 803.31 Wage certificates.

No advance under any mortgage shall be eligible for insurance unless there is filed with the application for such advance certificates acceptable to the Commissioner certifying that:

(1) The laborers and mechanics employed in the construction of the dwelling or dwellings, or housing project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor prior to the beginning of construction and after the date of filing of the application for insurance;

(2) All laborers and mechanics employed in the construction of such project have been paid not less than one and one-half times the regular rate of pay for employment in excess of eight hours in any one day or in excess of 40 hours in any one week.

§ 803.32 Non-discrimination provision.

Any contract or subcontract executed for the performance of construction of the project shall contain the provision that there shall be no discrimination against any employee, or applicant for employment, because of race, color, creed, or national origin.

§ 803.33 Special certificates and contract by mortgagor.

(a) The mortgagor must certify under oath that in selecting tenants for the property covered by the mortgage, the mortgagor will not discriminate against any family by reason of the fact that there are children in the family, and that the mortgagor will not sell the property while the mortgage insurance is in effect unless the purchaser also so certifies, such certifications to be filed with the Commissioner.

(b) The mortgagor must certify under oath that, so long as the mortgage is insured by the Commissioner, the mortgagor will not rent, permit the rental, or permit the offering for rental, of the housing, or any part thereof, covered by such mortgage for transient or hotel purposes. The corporate charter of the mortgagor or a contract with the Commissioner shall provide that so long as the said mortgage is insured or held by the Commissioner it will not rent such housing, or any part thereof for hotel purposes. For the purpose of this certificate, rental for transient or hotel purposes shall mean (1) rental for any period less than 30 days, or (2) any rental, if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linen, and bellboy service.

ELIGIBLE MORTGAGES

§ 803.34 Qualification of lenders.

The provisions of §§ 203.1 to 203.4 and 203.6 to 203.9 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

PROPERTY REQUIREMENTS

§ 803.35 Eligibility of property.

(a) A mortgage to be eligible for insurance must be on the interest of the lessee for not less than fifty-five years on a lease executed by the Military or such other interest in real estate as may be approved by the Commissioner.

(b) The property constituting security for the mortgage must be held by an eligible mortgagor as herein defined and must at the time the mortgage is insured be free and clear of all liens other than that of such mortgage except as otherwise provided in this subpart.

§ 803.36 Development of property.

At the time the mortgage is insured the mortgagor shall be obligated to con-

struct and complete new housing accommodations on the mortgaged property, designed principally for residential use, conforming to standards satisfactory to the Commissioner. The project shall consist of not less than eight dwelling units on one site and may be detached, semi-detached, or row houses, or multifamily structures; except that the Commissioner, upon request of the Military, may insure a mortgage on a project consisting of less than eight dwelling units.

The property or project may include such non-dwelling facilities as the Commissioner deems adequate to serve the occupants.

§ 803.37 Form of contract.

The form of contract between the Military and the eligible builder shall be subject to the prior approval of the Commissioner.

TITLE

§ 803.38 Eligibility of title.

(a) In order for the mortgaged property to be eligible for insurance, the Commissioner must determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for record. The title evidence will be examined by the Commissioner and the original endorsement of the credit instrument for insurance will be evidence of its acceptability.

(b) No part of the cost of title evidence may be paid out of the mortgage proceeds.

§ 803.39 Title evidence.

Upon insurance of the mortgage, the mortgagee, without expense to the Commissioner, shall furnish to the Commissioner, a survey satisfactory to him and such evidence of title as provided in this section, as the Commissioner may require.

(a) A policy of title insurance with respect to such mortgage, issued by a company satisfactory to the Commissioner. Such policy shall comply with dence of title as provided in this section, as the Commissioner may require. the "L. I. C. Standard Mortgagee Form," or the "A. T. A. Standard Mortgagee Form," or such other form as may be approved by the Commissioner; shall be payable to the mortgagee and the Commissioner as their respective interests may appear; and shall become a policy on the leasehold interest of the mortgagor, running to the mortgagee as owner upon the acquisition of the property by the mortgagee in extinguishment of a debt through foreclosure or by other means, and to the Commissioner as owner upon the acquisition of the property by him pursuant to the mortgage insurance contract.

(b) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

(c) A Torrens or similar title certificate.

(d) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or Territory thereof.

(e) A guarantee of title by the Secretary of Defense.

EFFECTIVE DATE

§ 803.40 Effective date.

The provisions of this subpart shall be effective as to all mortgages with respect to which a commitment to insure is issued on or after August 15, 1955.

Subpart B—Contract Rights and Obligations

DEFINITIONS

§ 803.251 Definitions.

(a) The term "mortgage" means a first mortgage on real estate, in fee simple, or on a leasehold (1) under a lease for not less than ninety-nine years which is renewable; or (2) under a lease for a period of not less than fifty years to run from the date the mortgage was executed; and the term "first mortgage" means such classes of first liens as are commonly given to secure advances on, or the unpaid purchase price of, real estate, under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby.

(b) The term "mortgagee" includes the original lender under a mortgage, and its successors and assigns approved by the Commissioner; and the term "mortgagor" includes the original borrower under a mortgage, its successors and assigns.

(c) The term "maturity date" means the date on which the mortgage indebtedness would be extinguished if paid in accordance with periodic payments provided for in the mortgage.

(d) The term "housing accommodations" means housing designed for occupancy by military personnel and their dependents, assigned to duty at or near the military installation where such housing units are constructed.

(e) The term "personnel" shall include personnel of the military and civilian personnel approved by the Secretary of Defense, or his designee, and the dependents of all such personnel.

(f) The term "Military" includes Army, Navy, Marine Corps, Air Force, and Coast Guard.

(g) The term "State" includes the several States and Alaska, Hawaii, Puerto Rico, the District of Columbia, Guam, the Virgin Islands, the Canal Zone, and Midway Island.

PREMIUMS

§ 803.252 Method of payment.

(a) The mortgagee, upon the initial endorsement of the mortgage for insurance shall agree to pay to the Commissioner a first insurance premium of one dollar per project for the construction period.

(b) On the date of the first principal payment on account of the mortgage the mortgagee shall pay the first insurance premium and a second premium equal to one-fourth of one percent of the average outstanding principal obligation for the following year.

(c) Until the mortgage is paid in full, or until the contract of insurance shall otherwise terminate, the mortgagee, on each anniversary of the date of the first principal payment shall pay an annual mortgage insurance premium equal to one-quarter of one percent of the average outstanding principal obligation of the mortgage for the year following the date upon which such payment becomes payable; except that the annual mortgage insurance premium rate shall be reviewed and shall be subject to revision on July 1, 1959 and at the end of each three year period thereafter by the Commissioner, the Secretary of Defense, and the Secretary of the Treasury or their designees, to a rate justified by the loss experience of the Armed Services Housing Mortgage Insurance Fund and the rate payable as the mortgage insurance premium shall be that determined as a result of the aforesaid review and revision: *Provided,* That in no event shall such premium charge exceed one-half of one percent: *And provided further,* That any change in the annual mortgage insurance premium rate will become effective only with respect to premiums which become due on the first day of the month following such revision.

(d) The premiums payable on and after the date of the first principal payment shall be calculated in accordance with the amortization provisions without taking into account delinquent payments or prepayments.

(e) Premiums shall be payable in cash or in debentures issued by the Commissioner against the Armed Services Housing Mortgage Insurance Fund under Title VIII of the National Housing Act at par plus accrued interest. All premiums, except the first premium, are payable in advance and no refund will be made of any portion thereof except that at the time of prepayment, the Commissioner will refund to the mortgagee for the account of the mortgagor an amount equal to the pro rata portion of the current annual mortgage insurance premium theretofore paid, which is ap-

plicable to the portion of the year subsequent to such prepayment.

(f) Upon agreement between the mortgagor and mortgagee, approved by the Commissioner, premiums due under this section may be paid directly by the mortgagor to the Commissioner. Upon the execution and approval of such agreement, the obligation of the mortgagor to make payments to the mortgagee on account of such mortgage insurance premiums and the obligation of the mortgagee to pay mortgage insurance premiums to the Commissioner shall cease until such time as the agreement is revoked.

(g) A mortgage may be finally endorsed for insurance after it has been assigned to the Commissioner for the purpose of making effective the military guarantee of payment and effecting an orderly closing of the transaction. In such event the mortgage insurance premium of one dollar per project provided in paragraph (a) of this section shall cover both the construction period and the period of time the mortgage is held by the Commissioner, and the references in paragraphs (b) (c), and (d) of this section to the date of first principal payment shall be deemed to mean the first day of the month next following the date of the transfer of the mortgage from the Commissioner to another mortgagee.

§ 803.253 Waiver of adjusted premium charge.

If the mortgage is prepaid prior to maturity, no adjusted premium charge will be required.

INSURANCE ENDORSEMENT

§ 803.254 Form of endorsement.

(a) Upon compliance satisfactory to the Commissioner with the terms and conditions of his commitment to insure, the Commissioner shall endorse the original credit instrument in form as follows:

No.----------

Insured under section 803 of the National Housing Act and Regulations thereunder of the Federal Housing Commissioner.

In effect on----------to the extent of advances approved by the Commissioner.

FEDERAL HOUSING COMMISSIONER,

By ----------
(Authorized agent)

Date----------

(b) The mortgage shall be an insured mortgage from the date of such endorsement. The Commissioner and the mortgagee shall thereafter be bound by this part with the same force and to the same extent as if a separate contract had been executed relating to the insured mortgage, including the provisions of this part and of the National Housing Act.

(c) After all advances under the mortgage have been made with the approval of the Commissioner, the Commissioner shall, upon presentation of original credit instrument, make a notation below the insurance endorsement in form as follows:

A total sum of $------ has been approved for insurance hereunder by the Commissioner.

FEDERAL HOUSING COMMISSIONER,

By ----------
(Authorized agent)

Date ----------

(Sec. 803, 69 Stat. 647, as amended; 12 U.S.C. 1748b)

RIGHTS AND DUTIES OF MORTGAGEE UNDER CONTRACT OF INSURANCE

§ 803.255 Defaults.

(a) The failure of the mortgagor to make any payments due under or provided to be paid by the terms of a mortgage insured under this subpart shall be considered a default under such mortgage.

(b) The failure to perform any other covenant under the provisions of a mortgage insured under this subpart shall be considered a default, provided the mortgagee, because of such default, has exercised its right under the mortgage and accelerated the debt.

(c) If such defaults as defined in paragraphs (a) and (b) of this section continue for a period of 30 days the mortgagee shall be entitled to receive the benefits of the insurance hereinafter provided.

§ 803.256 Notice.

(a) If the default as defined in § 803.255 is not cured within the 30 day grace period, the mortgagee shall within 30 days thereafter notify the Commissioner in writing of such default.

(b) Notwithstanding the provision of § 803.255(b), the mortgagee will be required to give notice in writing to the Commissioner of the failure of the mortgagor to comply with such covenant regardless of the fact the mortgagee may not have elected to accelerate the debt.

§ 803.257 Commissioner's right to require acceleration.

Upon receipt of notice of violation of a covenant, as provided for in § 803.256 (b), or otherwise being apprised thereof, the Commissioner reserves the right to require the mortgagee to accelerate payment of the outstanding principal balance due in order to protect the interests of the Federal Housing Commissioner.

§ 803.258 Transfer of property to Commissioner; conditions; required items.

(a) When the mortgagee becomes eligible for the benefits of the mortgage insurance, it shall within 30 days thereafter, or within such later time as may be agreed upon by the Commissioner in writing, notify the Commissioner in writing of its intention to file claim for debentures. At any time within 30 days after the date of such notice, or within such further period as may be agreed upon by the Commissioner in writing, the mortgagee shall, in such manner as the Commissioner may require, assign, transfer and deliver to the Commissioner the original credit instrument and the mortgage securing the same, without recourse or warranty, except that the mortgagee must warrant that no act or omission of the mortgagee has impaired the validity and priority of the mortgage, that the mortgage is prior to all mechanics' and materialmen's liens filed of record subsequent to the recording of such mortgage regardless of whether such liens attached prior to such recording date, and prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to the recording of such mortgage, except such liens or other matters as may be approved by the Commissioner, that the amount stated in the instrument of assignment is actually due and owing under the mortgage, that there are no offsets or counterclaims thereto, and that the mortgagee has a good right to assign and will promptly deliver to the Commissioner the mortgage and other items enumerated below:

(1) All rights and interest arising under the mortgage so in default;

(2) All claims of the mortgagee against mortgagor or others, arising out of the mortgage transaction;

(3) All policies of title or other insurance or surety bonds or other guaranties, and any and all claims thereunder, including evidence satisfactory to the Commissioner that the original title coverage has been extended to include the assignment of the mortgage to the Commissioner;

(4) Any balance of the mortgage loan not advanced to the mortgagor;

(5) Any cash or property held by the mortgagee or its agents or to which it is entitled, including deposits made for the account of the mortgagor, and which have not been applied in reduction of the principal of the mortgage indebtedness;

(6) All funds held by the mortgagee for the account of the mortgagor and which were received pursuant to any other agreement;

(7) All records, documents, books, papers and accounts relating to the mortgage transaction;

(8) Any additional information or data which the Commissioner may require.

(b) Nothing contained in this section shall be so construed as to require the mortgagee to take any action when the necessity therefor has been waived in writing by the Commissioner nor to prevent the mortgagee from taking action at a later date than herein specified if the Commissioner agreed thereto in writing.

§ 803.259 Delivery of debentures and certificate of claim.

(a) If the mortgagee proceeds in accordance with § 803.258 and furnishes evidence satisfactory to the Commissioner that there are no past due and unpaid ground rents, general taxes, or special assessments, and furnishes the warranties described in said section, the Commissioner shall deliver to the mortgagee:

(1) Debentures of the Armed Services Housing Mortgage Insurance Fund as set forth in section 803 of the National Housing Act which debentures shall:

(i) Be issued as of the date the mortgage became in default;

(ii) Have a total face value equal to the value of the mortgage as defined in section 803 (d) of the National Housing Act, which value shall be determined by

Date_____

quired to give notice in writing to the

adding to the original principal of the mortgage which was unpaid on the date of default the amount which the mortgagee may have paid for taxes, special assessments, and water rates which are liens prior to the mortgage; insurance on the property during construction and prior to final insurance endorsement; and reasonable expenses for the completion and preservation of the property, and any mortgage insurance premiums paid after default; less any amount received on account of the mortgage after such date, and any net income received by the mortgagee from the property after such date, and in the event the property has been damaged by fire or other hazards and loss has been sustained by reason of failure to keep the property insured during construction and prior to final insurance endorsement, the amount of such loss may be deducted from the amount of the debentures.

(iii) Be registered as to principal and interest;

(iv) At the option of the Commissioner and with the approval of the Secretary of the Treasury, be redeemed at par and accrued interest on any interest payment date on 3 months' notice of redemption given in such manner as the Commissioner shall prescribe;

(v) Mature 20 years from the date thereof;

(vi) Be issued in multiples of $50.00 and any difference not in excess of $50.00 between the amount of debentures to which the mortgagee is otherwise entitled hereunder and the aggregate face value of the debentures issued shall be paid in cash by the Commissioner to the mortgagee;

(vii) Bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect as of the date the commitment was issued, or as of the date of initial insurance endorsement of the mortgage, whichever rate is the higher. The following interest rates are effective for the dates listed:

Effective rate (percent)	On or after—	Prior to—
3¾	Jan. 1, 1959	July 1, 1959
4⅛	July 1, 1959	Jan. 1, 1961
3⅞	Jan. 1, 1961	July 1, 1961
3¾	July 1, 1961	

(2) A certificate of claim in accordance with section 803 (g) of the National Housing Act. Such certificate shall be for an amount which the Commissioner determines to be sufficient, when added to the face value of the debentures issued and the cash adjustment paid to the mortgagee, to equal the amount which the mortgagee would have received if, on the date of the assignment, transfer and delivery to the Commissioner, the mortgagor had extinguished the mortgage indebtedness by payment in full of all obligations under the mortgage. Such certificate of claim shall provide that there shall accrue to the holder of such certificate with respect to the face amount of such certificate, an increment at the rate of three percent per annum, beginning on the date of the assignment of the mortgage to the Commissioner, but which shall not be compounded. If any excess is realized from the mortgage and all claims in connection therewith so assigned, transferred and delivered, and from the property covered by such mortgage and all claims in connection with such property, after deducting all expenses incurred by the Commissioner in handling, dealing with, acquiring title to, and disposing of such mortgage and property and in collecting such claims, such excess shall be applied in payment of the certificate of claim and any balance thereafter shall be retained by the Commissioner and credited to the Armed Services Housing Mortgage Insurance Fund.

(b) In the event the mortgagor pays the obligation under the mortgage in full, prior to the maturity thereof and the Commissioner is given written notice by the mortgagee of such payment by the mortgagor, the obligation to pay any subsequent premium charge for insurance shall cease and all rights of the mortgagee, under the contract of insurance shall terminate as of the date of such notice.

§ 803.260 Hazard insurance.

The mortgaged premises shall be insured against fire and other hazards at all times during the construction period and prior to final insurance endorsement. The duty shall be upon the mortgagee to provide such coverage in the event the mortgagor fails to do so. If the mortgagee fails to pay any premiums necessary to keep the mortgaged premises so insured, the contract of insurance may be terminated at the election of the Commissioner. If at the time claim is filed for debentures, the property has been damaged by fire or other hazards, and loss has been sustained by reason of failure to keep the property insured during construction and prior to final endorsement, the amount of such loss may be deducted from the amount of the debentures. In the event a loss has occurred to the mortgaged property under any policy of fire or other hazard insurance and the amount of any funds received by the mortgagee in payment of such loss shall be sufficient to pay in full the entire mortgage indebtedness, the mortgage shall, upon receipt of such funds by the mortgagee, be deemed paid and the contract of mortgage insurance made with the Commissioner shall thereupon terminate. If, however, any funds so received shall be insufficient to pay such mortgage indebtedness in full, the mortgagee shall not exercise its option under the mortgage to use the proceeds of such insurance for the repairing, replacing or rebuilding of such premises or to apply such proceeds to the mortgage indebtedness without prior written approval of the Commissioner. If the Commissioner shall fail to give his approval to the use or application of such funds for either of said purposes within thirty days after written request by the mortgagee, the mortgagee may use or apply such funds against the outstanding unpaid indebtedness. No hazard insurance will be required after final insurance endorsement.

ASSIGNMENTS

§ 803.261 Assignment of insured mortgages.

(a) Bonds or other obligations issued in connection with an insured mortgage executed in the form of an indenture of trust providing for the issue and sale of such bonds or other obligations and appointing a trustee to act on behalf of the holders of such bonds or other obligations may be transferred as provided in the indenture of trust.

(b) An insured mortgage, other than those described in paragraph (a) of this section may not be transferred or pledged prior to the full disbursement of the mortgage loan, except with the prior written approval of the Commissioner which approval may be subject to such conditions and qualifications as the Commissioner may prescribe. Subsequent to full disbursement such mortgage may be transferred only to a transferee who is a mortgagee approved by the Commissioner. Upon such transfer and the assumption by the transferee of all obligations under the contract of insurance the transferor shall be released from its obligations under the contract of insurance.

(c) The contract of insurance shall terminate with respect to mortgages described in paragraph (b) of this section upon the happening of either of the following events:

(1) The transfer or pledge of the insured mortgage to any person, firm, or corporation, public or private, other than an approved mortgagee.

(2) The disposal by a mortgagee of any partial interest in the insured mortgage by means of a declaration of trust or by a participation or trust certificate or by any other device, unless with the prior written approval of the Commissioner, which approval may be subject to such conditions and qualifications as the Commissioner in his discretion may prescribe: *Provided,* That this paragraph shall not be applicable to any mortgage so long as it is held in a common trust fund maintained by a bank or trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank or trust company in its capacity as a trustee, executor or administrator; and in conformity with the rules and regulations prevailing from time to time of the Board of Governors of the Federal Reserve System, pertaining to the collective investment of trust funds: *Provided further,* That this paragraph shall not be applicable to any mortgage so long as it is held in a common trust estate administered by a bank or trust company which is subject to the inspection and supervision of a governmental agency, exclusively for the benefit of other banking institutions which are subject to the inspection and supervision of a governmental agency, and which are authorized

by law to acquire beneficial interests in such common trust estate, nor to any mortgage transferred to such a bank or trust company as trustee exclusively for the benefit of outstanding owners of undivided interest in the trust estate, under the terms of certificates issued and sold more than three years prior to said transfer, by a corporation which is subject to the inspection and supervision of a governmental agency.

RIGHTS IN HOUSING FUND

§ 803.262 No vested right.

Neither the mortgagee nor the mortgagor shall have any vested or other right in the Armed Services Housing Mortgage Insurance Fund.

AMENDMENTS

§ 803.263 Amendments not to change contractual rights.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendments shall not affect the contract of insurance on any mortgage already insured or to be insured on which the Commissioner has made a commitment to insure.

EFFECTIVE DATE

§ 803.264 Effective date.

The provisions of this subpart shall be effective as to all mortgages with respect to which a commitment to insure is issued on or after August 15, 1955.

PART 803a—MILITARY HOUSING INSURANCE

Subpart A—Eligibility Requirements [Obsolete]

Subpart B—Contract Rights and Obligations

Sec.

803a.251 Incorporation by reference.
803a.252 Effective date.
803a.253 Special mortgage agreements.

AUTHORITY: §§ 803a.251 to 803a.253 issued under sec. 808, 63 Stat. 570; 12 U.S.C. 1748g.

Subpart A—Eligibility Requirements [Obsolete]

Subpart B—Contract Rights and Obligations

§ 803a.251 Incorporation by reference.

All of the provisions of Part 207 of this chapter, concerning rights and obligations of a mortgagee under an insurance contract under section 207 of the National Housing Act, apply with equal force and effect to mortgages insured pursuant to section 803 of the National Housing Act except that references in Part 207 to section 207 of the National Housing Act shall be deemed to mean section 803 of the National Housing Act for purposes of this part, and references to "Housing Insurance Fund" in Part 207 shall be deemed to mean "Armed Services Housing Mortgage Insurance Fund" for purposes of this subpart.

§ 803a.252 Effective date.

The provisions of this subpart shall be effective as to all mortgages with respect to which a commitment to insure shall be issued on or after the date hereof.

§ 803a.253 Special mortgage agreements.

If a military department acting for and in behalf of the United States acquires a property covered by an insured mortgage, the Commissioner may, with the consent of the mortgagee and the military department, make such agreements and arrangements concerning the mortgage as may be appropriate without regard to the provisions of this subpart.

PART 809—ARMED SERVICES HOUS-

tary departments of the United States

to the Commissioner of the employment

§ 809.5 Maximum mortgage amount;

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PART 809—ARMED SERVICES HOUSING—CIVILIAN EMPLOYEES

Subpart A—Eligibility Requirements

Sec.
809.1 Incorporation by reference.
809.2 Certificate of need.
809.3 Employment status certificate.
809.4 Maximum mortgage amount; dollar limitation.
809.5 Maximum mortgage amount; loan-to-value limitation.
809.6 Mortgage obligation in multiples.
809.7 Mortgagor's minimum investment.
809.8 Eligible mortgagors.
809.9 Requirements as to risk and economic soundness.
809.10 Guarantee of fund from loss.
809.50 Effective date

Subpart B—Contract Rights and Obligations

809.251 Incorporation by reference

AUTHORITY: §§ 809.1 to 809.251 issued under sec. 807. 69 Stat. 651, sec. 809, 70 Stat. 273, as amended; 12 U.S.C. 1748f, 1748h-1.

Subpart A—Eligibility Requirements

§ 809.1 Incorporation by reference.

(a) All of the provisions of Part 203 of this chapter concerning eligibility requirements of mortgages under section 203 of the National Housing Act apply with equal force and effect to mortgages insured pursuant to section 809, except the following provisions:

Sec.
203.18 Maximum mortgage amounts.
203.28 Economic soundness of project.
203.42 Rental properties.
203.43 Eligibility of miscellaneous type mortgages.
203.50 et seq. Insured home improvement loans.
203.249 Effective date.

(b) For the purposes of this subpart all references in Part 203 of this chapter to section 203 of the National Housing Act shall be deemed to refer to section 809 of the National Housing Act.

§ 809.2 Certificate of need.

(a) *Issuance by Secretary of Defense.* No mortgage covering property at a military installation shall be insured unless the Secretary of Defense, or his designee, shall have certified to the Commissioner that the housing is necessary to provide adequate housing for civilians employed in connection with a research or development installation of one of the military departments of the United States or a contractor thereof, and that there is no present intention to substantially curtail the number of such civilian personnel assigned or to be assigned to such installation. Such certification shall be conclusive evidence to the Commissioner of the need for such housing.

(b) *Issuance by Administrator of National Aeronautics and Space Administration.* A mortgage may be insured under this subpart secured by property which is intended to provide housing for a person employed or assigned to duty at a research or development installation of the National Aeronautics and Space Administration and which is located at or near such installation, where such installation was a research or development installation of one of the military departments of the United States (on or after June 13, 1956) before its transfer to the jurisdiction of such Administration. The mortgage shall not be insured, however, unless the Administrator of the National Aeronautics and Space Administration, or his designee, shall have certified to the Commissioner that the housing is necessary to provide adequate housing for civilian or military personnel employed or assigned to duty in connection with a research or development installation of the National Aeronautics and Space Administration or a contractor thereof, and that there is no present intention to substantially curtail the number of such personnel assigned or to be assigned to such installation. Such certification shall be conclusive evidence to the Commissioner of the need for such housing.

§ 809.3 Employment status certificate.

(a) *Certificate by Secretary of Defense.* No mortgage covering property at a military installation shall be insured unless the Secretary of Defense, or his designee, has issued a certificate indicating that the mortgagor: (1) Requires housing; (2) is, on the date of the certificate, a civilian employee at a research or development installation of one of the military departments of the United States, or contractor thereof, at a research or development installation; and (3) is considered by the military department to be an essential, nontemporary employee at such date. Such certificate shall be conclusive evidence to the Commissioner of the employment status of the mortgagor and of the mortgagor's need for housing.

(b) *Certificate by Administrator of National Aeronautics and Space Administration.* An employment status certificate shall be required in connection with a mortgage secured by property which is intended to provide housing for a person employed or assigned to duty at a research or development installation of the National Aeronautics and Space Administration and which is located at or near such installation, where such installation was a research or development installation of one of the military departments of the United States (on or after June 13, 1956) before its transfer to the jurisdiction of such Administration. No mortgage shall be insured unless the Administrator of the National Aeronautics and Space Administration, or his designee, has issued a certificate indicating that the mortgagor: (1) Requires housing; (2) is, on the date of the certificate, a civilian employee or one of the military personnel assigned to duty at a research or development installation of the National Aeronautics and Space Administration, or is an employee of a contractor thereof, who is employed at such research or development installation; and (3) is considered by the National Aeronautics and Space Administration to be an essential, nontemporary employee at such date. Such certificate shall be conclusive evidence to the Commissioner of the employment status of the mortgagor and of the mortgagor's need for housing.

§ 809.4 Maximum mortgage amount; dollar limitation.

The mortgage shall involve a principal obligation in a dollar amount not in excess of:

(a) $25,000 in the case of a dwelling designed principally for a one-family residence; or

(b) $27,500 in the case of a two-family residence; or

(c) $27,500 in the case of a three-family residence; or

(d) $35,000 in the case of a four-family residence.

In addition to the dollar limitation prescribed in this section the mortgage amount is subject to a loan-to-value limitation as provided in § 809.5.

§ 809.5 Maximum mortgage amount; loan-to-value limitation.

In addition to meeting the dollar limitation as set forth in § 809.4, the mortgage shall be in an amount not in excess of:

(a) 97 percent of $15,000 of the appraised value of the property, as of the date the mortgage is accepted for insurance, and 90 percent of such value in excess of $15,000 but not in excess of $20,000, and 75 percent of such value in excess of $20,000, if the dwelling was approved for insurance prior to the beginning of construction, or if construction was completed more than one year preceding the date of the application for insurance; or

(b) 90 percent of $20,000 of the appraised value of the property, as of the date the mortgage is accepted for insurance, and 75 percent of such value in excess of $20,000, if the dwelling was not approved for insurance prior to the beginning of construction and construction was completed within one year preceding the application for insurance.

§ 809.6 Mortgage obligation in multiples.

The mortgage shall involve a principal obligation in an amount of $100 or multiples thereof (except that a mortgage having a principal obligation not in excess of $15,000 and an amortization period of either 20, 25 or 30 years, may be in an amount of $50 or multiples thereof).

§ 809.7 Mortgagor's minimum investment.

At the time the mortgage is insured the mortgagor shall have paid on account of the property at least three percent of the Commissioner's estimate of the cost of acquisition, or such larger amount as the Commissioner may determine, in cash or its equivalent.

§ 809.8 Eligible mortgagors.

No mortgage shall be insured unless executed by a mortgagor who meets the employment status requirements as set forth in § 809.3 and who at the time of insurance is the owner of the property and either occupies the property or certifies that his failure to do so is the result of a change of his employment.

§ 809.9 Requirements as to risk and economic soundness.

A mortgage may be accepted for insurance by the Commissioner without regard to any requirement that the property or project be economically sound or an acceptable risk.

§ 809.10 Guarantee of fund from loss.

If the Commissioner determines that insurance of mortgages on housing as certified by the Secretary of Defense or the Administrator of the National Aeronautics and Space Administration is not an acceptable risk, he may require the Secretary or the Administrator, as the case may be, to guarantee the Armed Services Housing Mortgage Insurance Fund against loss with respect to mortgages insured under this subpart.

§ 809.50 Effective date.

The provisions of this subpart are effective as to all mortgages on which a commitment to insure is issued on or after June 13, 1956.

Subpart B—Contract Rights and Obligations

§ 809.251 Incorporation by reference.

(a) All of the provisions of Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to mortgages insured under section 809 of the National Housing Act except the following provisions:

Sec.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund Income or Loss.
203.422 Right and liability under Mutual Mortgage Insurance Fund.
203.423 Distribution of distributive shares.
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.
203.435 Form of assignment to investing mortgagee.
203.440 et seq. Insured home improvement loans.

(b) For the purposes of this subpart all references in Part 203 of this chapter to section 203 of the Act shall be construed to refer to section 809 of the Act and all references to the Mutual Mortgage Insurance Fund shall be construed to refer to the Armed Services Housing Mortgage Insurance Fund.

PART 810—ARMED SERVICES HOUS-ING—IMPACTED AREAS

(b) *Multifamily, Sales or Rental Projects.* (1) All of the provisions of Part

endorsement of the credit instrument by the Commissioner

missioner without regard to any requirement that the property or project be

PART 810—ARMED SERVICES HOUSING—IMPACTED AREAS

Subpart A—Eligibility Requirements—Projects

Sec.
810.1 Incorporation by reference.
810.5 Definitions of terms as used in this subpart.
810.10 Preference in sale or rental.
810.15 Insurance risk and economic soundness.
810.20 Reduced mortgage amounts—leaseholds.
810.25 Eligible mortgages—form.
810.30 Eligible mortgagors.
810.35 Maximum mortgage amounts—Multifamily Rental Project.
810.40 Maximum mortgage amounts—Multifamily Sales Project.
810.45 Increased mortgage amounts—high cost areas.
810.50 Mortgage release provisions.
810.100 Effective date.

Subpart B—Contract Rights and Obligations—Projects

810.251 Incorporation by reference—Multifamily, Sales or Rental Project.

Subpart C—Eligibility Requirements—Individual Mortgages

810.501 Incorporation by reference.
810.505 Definitions of terms as used in this subpart.
810.510 Preference in sale or rental.
810.515 Insurance risk and economic soundness.
810.520 Reduced mortgage amounts—leaseholds.
810.525 Eligible mortgages—forms.
810.530 Eligible mortgagors.
810.535 Maximum mortgage amounts—individual Mortgage.
810.540 Mortgagor minimum investment.
810.545 Maximum term.
810.550 Amortization period.
810.555 Release from Multifamily Sales Project mortgage.

Subpart D—Contract Rights and Obligations—Individual Mortgages

810.751 Incorporation by reference—Individual Mortgages.

AUTHORITY: §§ 810.1 to 810.751 issued under secs. 807. 810, 69 Stat. 651, 73 Stat. 683; 12 U.S.C. 1748f, 1748h–2.

Subpart A—Eligibility Requirements—Projects

§ 810.1 Incorporation by reference.

(a) *General.* All of the provisions of §§ 203.1 to 203.4 and 203.6 to 203.9 of this chapter shall govern the eligibility qualifications and requirements of mortgages under this subpart.

(b) *Multifamily, Sales or Rental Projects.* (1) All of the provisions of Part 207 of this chapter covering mortgages insured under section 207 of the National Housing Act apply to Multifamily, Sales or Rental Project mortgages insured under this subpart except the following provisions:

Sec.
207.4 Maximum mortgage amounts.
207.10 Covenant for fire insurance.
207.11 Soundness of project.
207.17 Classification.
207.22 Qualification of lenders.
207.23 Eligibility of property.
207.31 Eligibility of miscellaneous type mortgages.
207.32 Eligibility of refinanced mortgages.
207.33 Eligibility of mortgages on trailer courts or parks for trailer coach mobile dwellings.
207.34 Reinsurance of Commissioner-held mortgages.

(2) For the purposes of this subpart all references in Part 207 of this chapter to section 207 of the National Housing Act shall be construed to refer to section 810 of such Act.

§ 810.5 Definitions of terms as used in this subpart.

As used in this subpart, the following terms will have the meaning indicated:

(a) "Act" means the National Housing Act, as amended.

(b) "Commissioner" means the Federal Housing Commissioner or his authorized representatives.

(c) [Reserved]

(d) "Mortgage" means a first mortgage on real estate, in fee simple, or on a leasehold (1) under a lease for not less than 99 years which is renewable; or (2) under a lease having a period of not less than 75 years to run from the date the mortgage is executed; or (3) under a lease executed by a governmental agency for the maximum term consistent with its legal authority, provided such lease has a period of not less than 50 years to run from the date the mortgage is executed; and the term "first mortgage" means such classes of first liens as are commonly given to secure advances on, or the unpaid purchase price of, real estate, under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby.

(e) "Insured mortgage" means a mortgage which has been insured by the endorsement of the credit instrument by the Commissioner.

(f) "Mortgagor" in the case of a Multifamily Rental Project means a private corporation, association, or trust entity formed or created with the approval of the Commissioner for the purpose of providing housing for rent or sale, and possessing powers necessary therefor and incidental thereto, which is regulated or restricted by the Commissioner as to rents, sales, charges, capital structure, rate of return, and methods of operation, as set out in the contractual documents prescribed and approved by the Commissioner, which regulations or restrictions shall remain in effect until such time as the mortgage insurance contract terminates without obligation upon the Commissioner to issue debentures as a result of such termination.

(g) "Mortgagee" means the original lender under a mortgage, its successors and such of its assigns as are approved by the Commissioner, and includes the holders of the credit instruments issued under a trust mortgage or deed of trust pursuant to which such holders act by and through a trustee herein named.

(h) "Multifamily Sales Project" means a project constructed under a blanket mortgage, covering a group of not less than eight single-family dwellings constructed for eventual sale to individual purchasers.

(i) "Multifamily Rental Project" means a project constructed for the purpose of providing rental housing accommodations for eligible tenants.

(j) "Maturity date" means the date on which the mortgage indebtedness would be extinguished if paid in accordance with periodic payments provided for in the mortgage.

§ 810.10 Preference in sale or rental.

Priority in the sale or rental of dwellings covered by a mortgage insured under this subpart shall be given to the following classes of persons:

(a) Military personnel;

(b) Essential civilian employees of the Armed Services;

(c) Employees of contractors for the Armed Services.

§ 810.15 Insurance risk and economic soundness.

Any mortgage may be accepted for insurance under this subpart by the Commissioner without regard to any requirement that the property or project be economically sound or an acceptable risk.

§ 810.20 Reduced mortgage amounts—leaseholds.

The maximum mortgage amount is subject to reduction by an amount equal to the capitalized value of the ground rent in the event the mortgage is on a leasehold estate rather than on a fee simple holding. The mortgage amount shall be adjusted to the next lowest mortgage amount as stipulated in § 810.75 for Individual Mortgages.

§ 810.25 Eligible mortgages—form.

(a) *Form.* The mortgage must be executed upon a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated and must be a first lien upon property that conforms with property standards prescribed by the Commissioner.

(b) *Disbursement of mortgage proceeds.* The entire principal amount of the mortgage must have been disbursed to the mortgagor or to his creditors for his account and with his consent.

§ 810.30 Eligible mortgagors.

In order to be eligible for mortgage insurance under this subpart, the mortgage shall be executed by a mortgagor approved by the Commissioner.

§ 810.35 Maximum mortgage amounts—Multifamily Rental Project.

A mortgage on a Multifamily Rental Project may involve a principal obligation not in excess of the lesser of the following:

(a) $5,000,000;

(b) 90 percent of the estimated value;

(c) $2,500 per room (or $9,000 per family unit if the number of rooms in such project does not equal or exceed four per family unit) for such part of such project as may be attributable to dwelling use.

§ 810.40 Maximum mortgage amounts—Multifamily Sales Project.

A mortgage on a Multifamily Sales Project may involve a principal obligation not in excess of the lesser of the following:

(a) $5,000,000;

(b) A sum computed on the basis of a separate mortgage for each single-

family dwelling comprising the project, equal to the total of each of the maximum principal obligations of such mortgage which would meet the requirements of section 203(b)(2) of the Act if the mortgagor were the owner and occupant who had made any required payment on account of the property described in such section of the Act.

§ 810.45 Increased mortgage amounts—high cost areas.

(a) In any geographical area where the Commissioner finds cost levels so require, he may increase the dollar amount limitations per room by an amount not to exceed $1,000 per room.

(b) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed, in any event, the maximum including high cost area increases, if any, otherwise applicable by more than one-half thereof.

§ 810.50 Mortgage release provisions.

A mortgage executed by a mortgagor of a Multifamily Sales Project shall provide that at any time after five years from the date the project became available for initial occupancy or at such earlier date as the Commissioner may authorize, the property underlying such mortgage may be released, in whole or in part, upon payment of the unpaid balance of the blanket mortgage allocable to the property released. Where the mortgage does not contain release provisions, no property shall, except with the consent of the Commissioner, be released from the lien thereof so long as the mortgage insurance is in force.

§ 810.100 Effective date.

Unless otherwise specified, the provisions of this subpart are effective as to all mortgages on which a commitment to insure is issued on or after September 23, 1959.

Subpart B—Contract Rights and Obligations—Projects

§ 810.251 Incorporation by reference—Multifamily, Sales or Rental Project.

(a) All of the provisions of Part 207 of this chapter covering mortgages insured under section 207 of the National Housing Act apply to Multifamily, Sales or Rental Project mortgages insured under section 810 of the National Housing Act except the follow.ng provision:

Sec.
207.264 Effective date.

(b) For the purposes of this part all references in Part 207 of this chapter to section 207 of the Act shall be construed to refer to section 810 of the Act and all references to the Housing Insurance Fund shall be construed to refer to the Armed Services Housing Mortgage Insurance Fund.

Subpart C—Eligibility Requirements—Individual Mortgages

§ 810.501 Incorporation by reference.

(a) *General.* All of the provisions of §§ 203.1 to 203.4 and 203.6 to 203.9 of this chapter shall govern the eligibility qualifications and requirements of mortgages under this subpart.

(b) *Individual Mortgages.* (1) All of the provisions of Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to Individual Mortgages insured under this subpart except the following provisions:

Sec.	
203.17	Mortgage provisions.
203.18	Maximum mortgage amounts.
203.19	Mortgagor's minimum investment.
203.28	Economic soundness of project.
203.29	Eligible mortgages in Alaska, Guam or Hawaii.
203.40	Location of property.
203.42	Rental properties.
203.43	Eligibility of miscellaneous type mortgages.
203.50	et seq. Insured home improvement loans.
203.249	Effective date.

(2) For the purposes of this subpart all references in Part 203 of this chapter to section 203 of the Act shall be construed to refer to section 810 of such Act.

§ 810.505 Definitions of terms as used in this subpart.

As used in this subpart, the following terms will have the meaning indicated:

(a) "Act" means the National Housing Act, as amended.

(b) "Commissioner" means the Federal Housing Commissioner or his authorized representatives.

(c) [Reserved]

(d) "Mortgage" means a first mortgage on real estate, in fee simple, or on a leasehold (1) under a lease for not less than 99 years which is renewable; or (2) under a lease having a period of not less than 75 years to run from the date the mortgage is executed; or (3) under a lease executed by a governmental agency for the maximum term consistent with its legal authority, provided such lease has a period of not less than 50 years to run from the date the mortgage is executed; and the term "first mortgage" means such classes of first liens as are commonly given to secure advances on, or the unpaid purchase price of, real estate, under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby.

(e) "Insured mortgage" means a mortgage which has been insured by the endorsement of the credit instrument by the Commissioner.

(f) "Mortgagor" in the case of an Individual Mortgage means the original borrower under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

(g) "Mortgagee" means the original lender under a mortgage, its successors and such of its assigns as are approved by the Commissioner, and includes the holders of the credit instruments issued under a trust mortgage or deed of trust pursuant to which such holders act by and through a trustee herein named.

(h) "Individual Mortgage" means a mortgage covering an individual single-family dwelling which has been released from a Multifamily Sales Project mortgage.

(i) "Maturity date" means the date on which the mortgage indebtedness would be extinguished if paid in accordance with periodic payments provided for in the mortgage.

§ 810.510 Preference in sale or rental.

Priority in the sale or rental of dwellings covered by a mortgage insured under this subpart shall be given to the following classes of persons:

(a) Military personnel;

(b) Essential civilian employees of the Armed Services;

(c) Employees of contractors for the Armed Services.

§ 810.515 Insurance risk and economic soundness.

Any mortgage may be accepted for insurance under this subpart by the Commissioner without regard to any requirement that the property or project be economically sound or an acceptable risk.

§ 810.520 Reduced mortgage amounts—leaseholds.

The maximum mortgage amount is subject to reduction by an amount equal to the capitalized value of the ground rent in the event the mortgage is on a leasehold estate rather than on a fee simple holding. The mortgage amount shall be adjusted to the next lowest mortgage amount as stipulated in § 810.535 for Individual Mortgages.

§ 810.525 Eligible mortgages—form.

(a) *Form.* The mortgage must be executed upon a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated and must be a first lien upon property that conforms with property standards prescribed by the Commissioner.

(b) *Disbursement of mortgage proceeds.* The entire principal amount of the mortgage must have been disbursed to the mortgagor or to his creditors for his account and with his consent.

§ 810.530 Eligible mortgagors.

In order to be eligible for mortgage insurance under this subpart, the mortgage shall be executed by a mortgagor approved by the Commissioner.

§ 810.535 Maximum mortgage amounts—Individual Mortgage.

The mortgage shall involve a principal obligation in an amount of $100 or multiples thereof except a mortgage having a principal obligation not in excess of $15,000 and an amortization period of either 20, 25, 30 or 35 years may be in an amount of $50 or multiples thereof and must not exceed the unpaid balance of the project mortgage allocable to the property offered as security.

§ 810.540 Mortgagor minimum investment.

At the time the mortgage is insured the mortgagor shall have paid on account of the property at least 3 percent of the Commissioner's estimate of the cost of acquisition or such larger amount as the Commissioner may determine, in cash or its equivalent.

§ 810.545 Maximum term.

The mortgage shall come due on the first of a month and must have a maturity satisfactory to the Commissioner, not more than 35 years or the unexpired term of the Multifamily Sales Project mortgage at the time of release of the mortgaged property from such property mortgage.

§ 810.550 Amortization period.

The amortization period shall be either 10, 15, 20, 25, 30 or 35 years by providing for 120, 180, 240, 300, 360 or 420 monthly amortization payments.

§ 810.555 Release from Multifamily Sales Project mortgage.

To be released from the lien of a project mortgage, the property to be released and mortgaged shall be included as part of a Multifamily Sales Project and shall have located thereon a single-family dwelling. The mortgage shall be executed in connection with the release of such property from the lien of the project mortgage and to replace or refinance the project mortgage as to such property.

§ 810.700 Effective date.

Unless otherwise specified, the provisions of this subpart are effective as to all mortgages on which a commitment to insure is issued on or after September 23, 1959.

Subpart D—Contract Rights and Obligations—Individual Mortgages

§ 810.751 Incorporation by reference—Individual Mortgages.

(a) All of the provisions of Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to Individual Mortgages insured under section 810 of the National Housing Act except the following provisions:

Sec.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund Income or Loss.
203.422 Right and liability under Mutual Mortgage Insurance Fund.
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.
203.435 Form of assignment to investing mortgagee.
203.440 et seq. Insured home improvement loans.

(b) For the purposes of this subpart all references to Part 203 of this chapter to section 203 of the Act shall be construed to refer to section 810 of the Act and all references to the Mutual Mortgage Insurance Fund shall be construed to refer to the Armed Services Housing Insurance Fund.

SUBCHAPTER U—NATIONAL DEFENSE HOUSING INSURANCE

PART 903—INDIVIDUAL RESIDENCES; NATIONAL DEFENSE HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements [Obsolete]

Subpart B—Contract Rights and Obligations

DEFINITIONS

Sec.
903.251 Definitions of terms.

PREMIUMS

903.252 Annual insurance premiums and charges.
903.253 Prepayment premiums.
903.254 Voluntary termination of insurance.
903.255 Pro-rata refund in event of prepayment.
903.256 Forebearance of foreclosure.

INSURANCE ENDORSEMENT

903.257 Form of endorsement.
903.258 Contract of insurance.

RIGHTS AND DUTIES OF APPROVED MORTGAGEE

903.259 Termination of insurance.
903.260 Time of default.
903.261 Transfer of property to the Commissioner; conditions of default in mortgage.
903.262 Condition of property when transferred; delivery of debentures; certificate of claim and definition of term "waste".
903.263 Satisfactory title evidence.

ASSIGNMENTS

903.264 In general.
903.265 Termination of contract of insurance by assignment.

AMENDMENTS

903.266 Amendments to regulations.

EFFECTIVE DATE

903.267 Effective date.

AUTHORITY: §§ 903.251 to 903.267 issued under secs. 903, 907, 65 Stat. 296, as amended, 301; 12 U.S.A. 1750b, 1750f.

Subpart A—Eligibility Requirements [Obsolete]

Subpart B—Contract Rights and Obligations

DEFINITIONS

§ 903.251 Definitions of terms.

As used in the regulations in this part:

(a) The term "Commissioner" means the Federal Housing Commissioner.

(b) The term "act" means the National Housing Act.

(c) The term "mortgage" means such a first lien upon real estate as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the jurisdiction where the real estate is situated, together with the credit instruments, if any, secured thereby.

(d) The term "insured mortgage" means a mortgage which has been insured by the endorsement of the Commissioner.

(e) The term "mortgagor" means the original borrower under a mortgage and his heirs, executors, administrators, and assigns.

(f) The term "mortgagee" means the original lender under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

(g) The term "contract of insurance" means the endorsement of the Commissioner upon the credit instrument given in connection with an insured mortgage, incorporating by reference the regulations in this part.

PREMIUMS

§ 903.252 Annual insurance premiums and charges.

(a) The mortgagee shall pay to the Commissioner, either in cash or debentures issued under Title IX of the National Housing Act at par plus accrued interest, mortgage insurance premiums in accordance with paragraphs (b) and (c) of this section which shall be calculated in accordance with the amortization provisions of the mortgage, without taking into account delinquent payments or prepayments.

(b) The initial mortgage insurance premium shall be paid on the date on which the insurance becomes effective by endorsement and shall cover the period beginning with the date of insurance endorsement and ending one year after the beginning of amortization. Regardless of whether such period is more or less than one year, a payment shall be made to the Commissioner on account of the initial mortgage insurance premium which payment shall be in an amount equal to ½ percent of the average outstanding principal obligation for the first year of amortization under the mortgage. If such payment is less than the minimum premium or more than the maximum premium prescribed by the

of the 120th scheduled monthly pay-

§ 903.254 Voluntary termination of in-

bentures. As a requirement of such

maximum premium prescribed by the act, the initial mortgage insurance premium shall be in the minimum amount prescribed by the act, and the amount of the second premium payment shall be adjusted accordingly; but if such payment is within the limitations prescribed by the act, no adjustment shall be made and the amount of the payment shall be retained by the Commissioner as the initial mortgage insurance premium.

(c) After payment of the initial mortgage insurance premium and until the mortgage is paid in full or until an application for debentures is received by the Commissioner, or until the contract of insurance is otherwise terminated with the consent of the Commissioner, the mortgagee shall continue to pay annual mortgage insurance premiums to the Commissioner. Such annual premium shall be paid on the anniversary date of the beginning of amortization and shall be in an amount equal to ½ percent of the average outstanding principal obligation for the 12-month period following the date on which the premium becomes payable.

(d) For the purpose of this section the term "beginning of amortization" shall mean the date one month prior to the date of the first monthly payment.

(e) Sections 203.305 through 203.309 of this chapter shall be applicable to mortgages insured under this subchapter.

§ 903.253 Prepayment premiums.

(a) In the event that the principal obligation of any mortgage accepted for insurance is paid in full prior to maturity, the mortgagee shall within 30 days thereafter notify the Commissioner of the date of prepayment. In the event the mortgage is paid in full before the due date of the 120th scheduled monthly payment, without taking into account delinquent payments or prepayments, the mortgagee shall pay to the Commissioner an adjusted premium charge of 1 percent of the original principal amount of the prepaid mortgage.

(b) In no event shall the adjusted premium exceed the aggregate amount of premium charges which would have been payable if the mortgage had continued to be insured until the due date of the 120th scheduled monthly payment, without taking into account delinquent payments or prepayments.

(c) No adjusted premium shall be due or payable in the following cases:

(1) Where at the time of such prepayment there is placed on the mortgaged property a new insured mortgage;

(2) Where the final maturity specified in the mortgage is accelerated solely by reason of partial prepayments made by the mortgagor which do not exceed in any one calendar year 15 percent of the original face amount of the mortgage, plus any increased amount resulting from open-end advances made pursuant to § 203.44 of this chapter, or by reason of partial payments made by the mortgagor in excess of 15 percent made during the period from May 27, 1941, through June 30, 1952.

(3) Where the final maturity specified in the mortgage is accelerated solely by reason of payments to principal to compensate for—

(i) Damage to the mortgaged property;

(ii) The conveyance of the mortgaged property pursuant to condemnation proceedings or in lieu of condemnation proceedings; or

(iii) A release of a part of such property if approved by the Commissioner;

(4) Where payment in full is made pursuant to a court order or of a delinquent mortgage on which foreclosure proceedings have been commenced, or for the purpose of avoiding foreclosure if the transaction is approved by the Commissioner; or

(5) Where payment in full is made within 60 days after the date the mortgage is endorsed for insurance, provided the mortgagee submits to the Commissioner a certificate signed by the mortgagor certifying that such payment was made in connection with the sale of the property to a veteran of World War II for his occupancy as a home.

(6) Where payment in full is made after the due date of the 120th scheduled monthly payment, without taking into account delinquent payments or prepayments.

§ 903.254 Voluntary termination of insurance.

Any contract of insurance meeting the requirements of this part may be voluntarily terminated in accordance with the provisions of section 229 of the Act. Voluntary terminations of insurance contracts shall be subject to the applicable provisions of Part 203 of this chapter.

§ 903.255 Pro-rata refund in event of prepayment.

Upon such prepayment the contract of insurance shall terminate and the Commissioner will refund to the mortgagee for the account of the mortgagor an amount equal to the pro rata portion of the current annual mortgage insurance premium and insurance charge in the case of open-end advances theretofore paid which is applicable to the portion of the year subsequent to such payment, computed from the first day of the month following the month in which such prepayment occurs, provided that no such refund will be made in any case where the prepayment occurs in the twelfth month of the premium year.

§ 903.256 Forbearance of foreclosure.

With respect to any mortgage insured under this part, if the Commissioner finds that a default was due to circumstances beyond the mortgagor's control and determines that the mortgage will be restored to a current condition within a reasonable period of time, the Commissioner may approve forbearance of foreclosure relief as follows:

(a) *Uncollected interest allowance.* The mortgagee may withhold foreclosure proceedings against the mortgagor for a period of time determined by the Commissioner. If payments received from the mortgagor during the period of forbearance are insufficient to pay interest at the mortgage rate after applying such payments in the order set forth in the mortgage and the mortgage is subsequently foreclosed, the debentures may include an allowance for uncollected interest accrued during the period of such forbearance.

(b) *Assignment of defaulted mortgages.* With the prior written approval of the Commissioner, the mortgagee may assign the mortgage in exchange for debentures. As a requirement of such assignment:

(1) The mortgagee shall deliver:

(i) The original credit and security instruments assigned without recourse or warranty, except that no act or omission of the mortgagee shall have impaired the validity and priority of the mortgage;

(ii) All rights and interests arising under the mortgage, and all claims of the mortgagee against the mortgagor or others arising out of the mortgage transaction;

(iii) All title evidence held by the mortgagee, extended to include the assignment of the mortgage to the Commissioner;

(iv) All cash or property held by the mortgagee or to which it is entitled, including deposits made for the account of the mortgagor and which have not been applied in reduction of the principal mortgage indebtedness;

(v) All records, documents, books, papers and accounts relating to the mortgage transaction;

(vi) Any additional information or data which the Commissioner may require.

(2) The mortgagee shall certify that:

(i) The mortgage is prior to all mechanics' and materialmen's liens filed of record subsequent to the recording of such mortgage regardless of whether such liens attach prior to such recording date, and prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to such mortgage except such liens or other matters as may have been approved by the Commissioner;

(ii) The amount stated in the instrument of assignment is actually due and owing under the mortgage;

(iii) There are no offsets or counterclaims thereto and the mortgagee has a good right to assign.

(c) *Condition of property.* The property covered by the mortgage which is to be assigned shall meet all of the provisions of § 295.13.

INSURANCE ENDORSEMENT

§ 903.257 Form of endorsement.

Upon compliance, satisfactory to the Commissioner, with the terms of his commitment to insure, the Commissioner will—

(a) Endorse the original credit instrument in form as follows:

No. --------

Insured under section 903 of the National Housing Act and Regulations of the Federal Housing Commissioner thereunder, dated August 11, 1954, as amended.

FEDERAL HOUSING COMMISSIONER
By----------
(Authorized agent)
Date----------

(b) Evidence insurance of an open-end advance by delivering to the mortgagee a certificate in form as follows:

No. --------

Insured as an additional advance in the principal amount of $------ under section 903 of the National Housing Act and Regulations of the Federal Housing Commissioner thereunder, dated August 11, 1954.

FEDERAL HOUSING COMMISSIONER
By ----------
(Authorized agent)
Date ----------

§ 903.258 Contract of insurance.

The mortgage, including any open-end advances made thereunder and approved by the Commissioner, shall be an insured mortgage from the date of endorsement. The Commissioner and the mortgagee shall thereafter be bound by the regulations in this part with the same force and to the same extent as if a separate contract had been executed relating to the insured mortgage, including the provisions of the regulations in this part and of the National Housing Act.

RIGHTS AND DUTIES OF APPROVED MORTGAGEE

§ 903.259 Termination of insurance.

In the event the mortgagee forecloses on the mortgaged property, but does not convey it to the Commissioner in accordance with § 903.252, and the Commissioner is given written notice thereof, or in the event the mortgagor pays the obligation under the mortgage in full, prior to the maturity thereof, and the mortgagee pays any adjusted premium required under § 903.253, and the Commissioner is given written notice by the mortgagee of such payment by the mortgagor, the obligation to pay any subsequent premium charge for insurance shall cease and all rights of the mortgagee and mortgagor, under § 903.262 shall terminate as of the date of such notice.

§ 903.260 Time of default.

If the mortgagor fails to make any payments, or to perform any other covenant or obligation under the mortgage, and such failure continues for a period of 30 days, the mortgage shall be considered in default, and the mortgagee shall, within 60 days thereafter, give notice in writing to the Commissioner of such default, unless such default has been cured or unless the Commissioner has been notified of a previous default which remains uncured.

§ 903.261 Transfer of property to the Commissioner; conditions of default in mortgage.

(a) At any time within one year from the date of default the mortgagee, at its election, shall either:

(1) With, and subject to, the consent of the Commissioner, acquire by means other than foreclosure of the mortgage, possession of, and title to, the mortgaged property; or

(2) Commence foreclosure of the mortgage; provided, that, if the laws of the State in which the mortgaged property is situated do not permit the commencement of such foreclosure within such period of time, the mortgagee shall commence such foreclosure within 60 days after the expiration of the time during which such foreclosure is prohibited by such laws.

(b) The mortgagee shall promptly give notice in writing to the Commissioner of the institution of foreclosure proceedings and shall exercise reasonable diligence in prosecuting such proceedings to completion.

(c) For the purpose of this section, the date of default shall be considered as 30 days after (1) the first uncorrected failure to perform a covenant or obligation, or (2) the first failure to make a monthly payment which subsequent payments by the mortgagor are insufficient to cover when applied to the overdue monthly payments in the order in which they became due: *Provided, however,* That with respect to any mortgage heretofore or hereafter insured, and notwithstanding any other provisions of this part, if the mortgagee withholds or has withheld foreclosure proceedings against the mortgagor pursuant to the provisions of a forbearance agreement approved by the Commissioner, partial payments received by the mortgagee may be applied and reapplied in the manner prescribed in such agreement, the date of default shall be 30 days after the due date of the earliest monthly payment any part of which remains unpaid, and the Commissioner may waive the payment of mortgage insurance premiums, or any portion thereof, to the extent that partial payments received from the mortgagor during the period of forbearance are insufficient to pay such premiums after applying such partial payments to delinquent interest at a rate not in excess of the interest rate applicable to debentures to which the mortgagee may be entitled under the provisions of § 903.262 (a) (1).

(d) If after default and prior to the completion of foreclosure proceedings the mortgagor shall pay to the mortgagee all monthly payments in default and such expenses as the mortgagee shall have incurred in connection with the foreclosure proceedings, notice shall be given to the Commissioner, and the insurance shall continue as if such default had not occurred.

(e) Nothing contained in this section shall be construed so as to prevent the mortgagee, with the written consent of the Commissioner, from taking action at a later date than specified in this part.

(f) If at any time during default the mortgagor is a "person in military service" as such term is defined in the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, the period during which he is in such service shall be excluded in computing the one-year period within which the mortgagee shall commence foreclosure or acquire the property by other means as provided in this section and no postponement or delay in the prosecution of foreclosure proceedings during the period the mortgagor is in such military service shall be construed as failure on the part of the mortgagee to exercise reasonable diligence in prosecuting such proceedings to completion as required by this section.

(g) If the mortgagor is a person in military service as defined in such act, the mortgagee may, by written agreement with the mortgagor, postpone for the period of military service, and three months thereafter, that part of the monthly payment, or any part thereof which represents amortization of principal, provided such agreement contains a provision for the resumption of monthly payments thereafter in amounts which will completely amortize the mortgage debt within its original maturity. Such agreement, however, will in no way affect the amount of the annual mortgage insurance premium which will continue to be calculated in accordance with the original amortization provisions.

(h) Nothing contained in this section shall be construed to prevent the mortgagee, with the consent of the Commissioner, from entering into a written agreement with the mortgagor postponing for a period not to exceed one year that part of the monthly payment or any part thereof which represents amortization of principal where the mortgagor is the owner of a group of properties consisting of a project of not less than ten rental units, each covered by a mortgage insured under section 903 of the National Housing Act and by the provisions of the agreement, and where the agreement obligates the mortgagor to deposit with the mortgagee the entire net income from all of the properties comprising the project, under arrangements satisfactory to the Commissioner, and obligates the mortgagor to resume monthly payments after the effective period of the agreement in such amounts as will completely amortize the mortgage indebtedness within the original maturity. Such agreement will in no way affect the amount of the annual mortgage insurance premiums, which will continue to be calculated in accordance with the original amortization provisions.

§ 903.262 Condition of property when transferred; delivery of debentures; certificate of claim and definition of the term "waste".

(a) If the default is not cured as aforesaid, and if the mortgagee has otherwise complied with the provisions of § 903.259, and at any time within thirty days (or such further time as may be necessary to complete the title examination and perfect such title) after acquiring possession of the mortgaged property by foreclosure, or by other means in accordance with § 903.261(a),

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the mortgagee shall either tender to the Commissioner a satisfactory conveyance

mortgagee for taxes, ground rent and water rates, which are liens prior to the

par and accrued interest on any interest

mortgagee and transferred or conveyed

the mortgagee shall either tender to the Commissioner a satisfactory conveyance of title and transfer of possession (free of occupants if the Commissioner so requires) under a deed containing a covenant which warrants against the acts of the mortgagee and all claiming by, through, or under it, or with the prior approval of the Commissioner, tender to the Commissioner a satisfactory conveyance of title and transfer of possession (free of occupants if the Commissioner so requires) under a deed or other satisfactory instrument of conveyance from the mortgagor or other appropriate grantor, such deeds or instrument of conveyance, conveying good merchantable title (evidenced as hereinafter provided in § 903.263) to such property undamaged by fire, earthquake, flood, or tornado, and undamaged by waste, except as hereinafter in this section provided, and assigns (without recourse or warranty) any and all claims which it has acquired in connection with the mortgage transaction, and as a result of the foreclosure proceedings or other means by which it acquired or tendered such property, except such claims as may have been released with the approval of the Commissioner, the Commissioner shall promptly accept conveyance of such property and such assignment and shall deliver to the mortgagee:

(1) Debentures of the National Defense Housing Insurance Fund as set forth in section 904 of the act, which debentures shall:

(i) Be issued as of the date foreclosure proceedings were instituted, or as of the date the property was otherwise acquired by the mortgagee after default, or as of the date the property was acquired by the Commissioner if directly conveyed to the Commissioner from the mortgagor;

(ii) Have a face value to be determined by adding to original principal of the mortgage, as increased by the amount of advances made by the mortgagee and approved by the Commissioner for the improvement or repair of the property pursuant to an "open-end" provision in the mortgage, which was unpaid on the date of the institution of the foreclosure proceedings or the acquisition of the property otherwise after default, the amount of all payments which have been made by the mortgagee for taxes, ground rent and water rates, which are liens prior to the mortgage, special assessments, which are noted on the application for insurance or which become liens after the insurance of the mortgage, hazard insurance on the mortgaged property, any mortgaged insurance premiums or charges paid after the institution of foreclosure proceedings or the acquisition of the property otherwise after default, and by deducting from such total any amount received on account of the mortgage after the institution of foreclosure proceedings or the acquisition of the property otherwise after default and from any source relating to the property on account of rent or other income after deducting reasonable expenses incurred in handling the property: *Provided however,* That with respect to mortgages on which the unpaid principal obligation at the time of the institution of foreclosure proceedings exceeds 80 percent of the appraised value of the property as of the date the mortgage was accepted for insurance, there will be included in the debentures issued by the Commissioner, on account of the cost of foreclosure (or of acquiring the property by other means) actually paid by the mortgagee and approved by the Commissioner an amount not in excess of 2 percent of the unpaid principal of the mortgage as of the date of the institution of foreclosure proceedings and not in excess of $75; or not in excess of two-thirds of such cost, whichever is the greater: *Provided further,* That with respect to mortgages to which the provisions of sections 302 and 306 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, apply, there shall be included in the debentures an amount which the Commissioner finds to be sufficient to compensate the mortgagee for any loss which it may have sustained on account of interest on debentures and the payment of insurance premiums by reason of its having postponed the institution of foreclosure proceedings or the acquisition of the property by other means during any part or all of the period of such military service and three months thereafter;

(iii) Be registered as to principal and interest;

(iv) At the option of the Commissioner and with the approval of the Secretary of the Treasury, be redeemed at par and accrued interest on any interest payment day on 3 months' notice of redemption given in such manner as the Commissioner shall prescribe;

(v) Mature 20 years from the date thereof;

(vi) Bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect as of the date the commitment was issued, or as of the date the mortgage was endorsed for insurance, whichever rate is the higher. The following interest rates are effective for the dates listed:

Effective rate (percent)	On or after—	Prior to—
2½	Sept. 1, 1951	July 8, 1953
2¾	July 8, 1953	May 29, 1954
2½	May 29, 1954	Jan. 1, 1955
2⅝	Jan. 1, 1955	July 1, 1955
2⅞	July 1, 1955	July 1, 1956
3	July 1, 1956	Jan. 1, 1957
3¼	Jan. 1, 1957	July 1, 1957
3⅜	July 1, 1957	

(2) A certificate of claim in accordance with section 904 (e) of the act, which shall become payable, if at all, upon the sale and final liquidation of the interest of the Commissioner in such property in accordance with said section 904 (e) of the act. This certificate shall be for an amount which the Commissioner shall determine to be sufficient to pay all amounts due under the mortgage and not covered by the amount of debentures and shall include a reasonable amount for necessary expenses incurred by the mortgagee in connection with the foreclosure proceedings or the acquisition of the mortgaged property otherwise and the conveyance thereof to the Commissioner, including reasonable attorney's fees, unpaid interest and cost of repairs to the property made by the mortgagee after default to remedy the waste mentioned in this section. Each such certificate of claim shall provide that there shall accrue to the holder thereof with respect to the face amount of such certificate, an increment at the rate of three per centum per annum.

(3) In computing the face value of the debentures, in addition to the items provided in subparagraph (1) of this paragraph, there may be added to the unpaid principal of the mortgage, payments made by the mortgagee for taxes imposed upon any deeds or other instruments by which said property was acquired by the mortgagee and transferred or conveyed to the Commissioner, payments made by the mortgagee, with the approval of the Commissioner, for the purpose of protecting, operating, or preserving the property.

(b) The term "waste" as used in this section means permanent or substantial injury caused by unreasonable use, or abuse, and is not intended to include damage caused by ordinary wear and tear.

(c) The provisions of this section concerning waste shall not apply to mortgages on which the unpaid principal obligation at the time of the institution of foreclosure proceedings exceeds 75 percent of the appraised value of the property as of the date the mortgage was accepted for insurance, and in any event the obligation of the mortgagee to repair waste in accordance with such provision shall be limited to the amount of $100 for each family dwelling unit covered by the mortgage.

(d) In computing the value of the mortgage as set forth in subparagraph (a) (1) of this section, the Commissioner may include in such computation the amount of payments made by the mortgagee for:

(1) Taxes imposed upon any deeds or other instruments by which said property was acquired by the mortgagee and transferred or conveyed to the Commissioner;

(2) Reasonable payments made by the mortgagee, with the approval of the Commissioner, for the purpose of protecting, operating, or preserving the property;

(3) The costs of acquiring the property by the mortgagee and conveying and evidencing title of the property to the Commissioner, may be included in the debenture computation as foreclosure costs and shall be subject to the aggregate limitation on foreclosure costs.

(e) Upon an acceptable assignment of a mortgage, the Commissioner shall issue to the mortgagee debentures having a total face value equal to the unpaid balance of the loan at the time of assignment, plus any accrued mortgage interest and any advances made under the mortgage and approved by the Commissioner.

(f) Applications for debentures with respect to mortgages insured under the provisions of this part shall be processed

in accordance with the procedures under Part 203 of this chapter.

(Sec. 903, 65 Stat. 296, as amended; 12 U.S.C. 1750b)

§ 903.263 Satisfactory title evidence.

Sections 203.385 through 203.389 of this chapter shall be applicable to the mortgages insured under this subchapter.

ASSIGNMENTS

§ 903.264 In general.

(a) When the insured mortgage is transferred to another approved mortgagee, such transferor and transferee shall both notify the Commissioner of such transfer within 30 days thereof, and the transferee shall thereupon succeed to all the rights and become bound by all the obligations of the transferor under the contract of insurance; and the transferor shall thereupon be released from its obligations under the contract of insurance.

(b) Whenever the insured mortgage is transferred to another approved mortgagee for the purposes of collateral only, no notice need be given to the Commissioner until such collateral is foreclosed, but the transferor shall remain subject to all the obligations of the contract of insurance.

§ 903.265 Termination of contract of insurance by assignment.

The contract of insurance shall terminate upon the happening of either of the following events:

(a) The acquisition of the insured mortgage by, or the pledge thereof to, any person, firm or corporation, public or private, other than an approved mortgagee, whether individually or in trust for another: *Provided,* That this paragraph shall not be applicable to a mortgage acquired or held by an approved mortgagee, which is a banking institution or trust company inspected and supervised by some governmental agency, or a trust held or administered by it in a fiduciary capacity, as long as such fiduciary relationship shall remain in effect.

(b) The disposal by an approved mortgagee of any partial interest in an insured mortgage or group of insured mortgages (whether to another approved mortgagee or otherwise) by means of a declaration of trust, or by a participation or trust certificate, or by any other device: *Provided,* That this paragraph shall not be applicable to any mortgage so long as it is held in a common trust fund maintained by a bank or trust company (1) exclusively for collective investment and reinvestment of moneys contributed thereto by the bank or trust company in its capacity as a trustee, executor or administrator; and (2) in conformity with the rules and regulations prevailing from time to time of the Board of Governors of the Federal Reserve System, pertaining to the collective investment of trust funds: *Provided further,* That this paragraph shall not be applicable to any mortgage so long as it is held in a common trust estate administered by a bank or trust company which is subject to the inspection and supervision of a governmental agency, exclusively for the benefit of other banking institutions which are subject to the inspection and supervision of a governmental agency, and which are authorized by law to acquire beneficial interests in such common trust estate, nor to any mortgage or group of mortgages transferred to such a bank or trust company as trustee exclusively for the benefit of outstanding owners of undivided interests in the trusts estate, under the terms of certificates issued and sold more than three years prior to said transfer, by a corporation which is subject to the inspection and supervision of a governmental agency: *And provided further,* That this paragraph shall not be applicable to any participation in a mortgage by one or more banks or trust companies pursuant to an agreement entered into prior to the insurance of such mortgage under which such institutions participate in the advance of construction funds on contemplation of reimbursement from the proceeds of the sale of the insured mortgage, and such participation may continue for such period of time after the insurance of the mortgage as may be required to execute the purposes of such agreement, provided the mortgagee presenting the mortgage for insurance is entitled to all the rights and is bound by all the obligations of the contract of insurance: *And provided further,* That this paragraph shall not be applicable to any participation in a mortgage by two banks or trust companies under an agreement which provides that one of the participants shall be the mortgagee of record under the contract of mortgage insurance and that the Federal Housing Commissioner shall be under no obligation to recognize or deal with the other participant with respect to the obligations of the mortgagee under the contract of insurance or the rights of the mortgagee to obtain the benefits of the contract of insurance.

AMENDMENTS

§ 903.266 Amendments to regulations.

The regulations in this part may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not affect the contract of insurance on any mortgage already insured, or any mortgage or prospective mortage on which the Commissioner has made a commitment to insure.

EFFECTIVE DATE

§ 903.267 Effective date.

The regulations in this part are effective as to all mortgages on which a commitment to insure is issued to an approved mortgagee on or after August 11, 1954.

PART 908—NATIONAL DEFENSE RENTAL HOUSING MORTGAGE IN-

contract under section 207 of the National Housing Act, apply with equal

mortgages (whether or not insured by the mortgagee or otherwise) by means of a contract under section 207 of the National Housing Act, apply with equal force and effect to mortgages insured pursuant to section 908 of the National Housing Act, except that references in Part 207 to section 207 of the National Housing Act shall be deemed to mean section 908 of the National Housing Act for purposes of this part, and references to "Housing Insurance Fund" in Part 207 shall be deemed to mean "National Defense Housing Insurance Fund" for purposes of this part.

PART 908—NATIONAL DEFENSE RENTAL HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements [Obsolete]

Subpart B—Contract Rights and Obligations

Sec.
908.251 Incorporation by reference.
908.252 Effective date.

AUTHORITY: §§ 908.251 and 908.252 issued under sec. 907, 65 Stat. 301; 12 U.S.C. 1750f.

Subpart A—Eligibility Requirements [Obsolete]

Subpart B—Contract Rights and Obligations

§ 908.251 Incorporation by reference.

All of the provisions of Part 207 of this chapter, concerning rights and obligations of a mortgagee under an insurance contract under section 207 of the National Housing Act, apply with equal force and effect to mortgages insured pursuant to section 908 of the National Housing Act, except that references in Part 207 to section 207 of the National Housing Act shall be deemed to mean section 908 of the National Housing Act for purposes of this part, and references to "Housing Insurance Fund" in Part 207 shall be deemed to mean "National Defense Housing Insurance Fund" for purposes of this part.

§ 908.252 Effective date.

The provisions of this part shall be effective as to all mortgages with respect to which a commitment to insure shall be issued on or after the date hereof.

SUBCHAPTERS V–Z—[RESERVED]

[F.R. Doc. 61–7692; Filed, Aug. 11, 1961; 8:45 a.m.]